



Office of Housing and
Construction Standards

Strata Property Act

Guides 2 to 29

Province of British Columbia
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Guide 2: The Role and Responsibilities of Owner Developers

The Act clearly sets out some unique obligations of the Owner Developer from the date that the strata corporation is created by the deposit of the strata plan in the Land Title Office until two years following the strata corporation's first annual general meeting ("First AGM"). Please review the following to determine the role and responsibilities of Owner Developers throughout this period.

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The guides are provided for the reader's convenience; they are not a substitute for professional advice including legal advice. Please note: the Standard Bylaws can be amended.

1. Who is the Owner Developer?

An "Owner Developer" is defined in the Act as:

- the owner of freehold land shown on a strata plan at the time that the strata plan is filed;
- the holder of the ground lease shown on a leasehold strata plan at the time that the strata plan is filed;
- a person who acquires all of the strata lots in a strata plan from the original Owner Developer; or
- a person who acquires more than 50% of the strata lots from the original Owner Developer.

[Note: This may result in there being two separate Owner Developers within a single development.]

2. Creating the Strata Corporation

The Owner Developer creates the strata corporation, which is a legal entity, by registering a strata plan in the Land Title Office.

The Land Title Office will assign a number to the strata corporation. This will become the legal identity of the strata corporation. Examples of strata corporation numbers are LMS 1234 or KAS 9876.

The name of the strata corporation is "The Owners, Strata Plan, (*the registration number of the strata plan*)".

Strata corporations are created under the *Strata Property Act* (the "Act"), and not the *Business Corporations Act*. This means that:

- there is no incorporation certificate for a strata corporation; and
- the Registrar of Companies does not regulate strata corporations.

3. Amending the Bylaws

When the Owner Developer files the strata plan in the Land Title Office, he or she can amend the Standard Bylaws or create new bylaws by filing an “Owner Developers’ Notice of Different Bylaws” (Form Y) concurrently with the strata plan.

New bylaws are commonly filed by Owner Developers to:

- create separate sections within the strata corporation;
- create rental restrictions; and
- apportion expenses by type of strata lot.

New bylaws will not be valid if they contradict the Act, the Regulations or any other legislation.

4. Obligations of the Owner Developer Prior to the First AGM

Once a strata corporation has been created, Owner Developers have numerous obligations prior to the First AGM of the strata corporation. Owner Developers must:

- exercise the powers and perform the duties of the strata council, which include:
 - collecting strata fees from owners when they come due, including from themselves, if they still own strata lots;
 - calling and conducting special general meetings;
 - paying strata corporation bills beginning one month following the first conveyance of a strata lot;
 - exercising the power to grant owners or tenants the right to exclusively use common property;

[For a more detailed explanation of strata council duties, please refer to Guide 4, “The Role and Responsibilities of the Strata Council”.]
- exercise reasonable care and skill when acting as the strata council;
- prepare a twelve month interim budget and provide it to purchasers prior to entering into contracts with purchasers;
- always act in good faith with a view to the best interests of the strata corporation;
- pursue all warranty remedies with respect to the construction of the common property and common assets;
- ensure that the term of any insurance policy for the strata corporation continues for at least four weeks following the date of the First AGM;
- not enter into a contract with the strata corporation after the first conveyance of a strata lot, unless the contract is approved by a unanimous resolution at a special general meeting. Persons who are not at arm’s length to the Owner Developer also

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cannot enter into a contract with the strata corporation after the first conveyance of a strata lot, unless the contract is approved by unanimous resolution.

- prepare the strata corporation for its First AGM;
- ensure that after the conveyance of the first strata lot but before the First AGM, all resolutions ordinarily requiring approval by a $\frac{3}{4}$ vote, but which need to be passed by a unanimous resolution during this period, are approved accordingly; and
- establish a contingency reserve fund at the time of the first conveyance of a strata lot to a purchaser.

[Please refer to part 12 of this guide, "Seeding the Contingency Reserve Fund", for an explanation of the amount that the Owner Developer must contribute to the contingency reserve fund.]

5. When the First AGM is Held

The Owner Developer must ensure that the First AGM takes place within six weeks of the earlier of the following dates:

- nine months from the date of the first conveyance of a strata lot; or
- the date that 50% plus one of the strata lots are conveyed to purchasers.

If the Owner Developer does not hold the First AGM by the required date, then the Owner Developer will owe the strata corporation:

- \$1,000 if the First AGM is delayed by up to thirty days; and
- \$1,000 for each additional delay of seven days after the initial thirty day period.

The strata corporation can collect the amount owing by the Owner Developer for failing to hold the First AGM within the required time by registering a lien against one of the Owner Developer's strata lots, if the Owner Developer still owns one or more strata lots.

6. If the Owner Developer Fails to Hold the First AGM

If the Owner Developer fails to hold the First AGM within the required time, then:

- an owner may hold the First AGM, provided that he or she gives two weeks' notice to all persons to whom the Owner Developer should have given notice, and to the Owner Developer;
- the Owner Developer will owe the strata corporation \$1,000 if the First AGM is delayed by up to thirty days, and \$1,000 for each additional delay of seven days after the initial thirty day period; and

[See part 5 of this guide for an explanation of how this penalty applies.]

- any penalty owing to a strata corporation by an Owner Developer by reason of failing to hold the First AGM within time, can be collected by the strata corporation

registering lien against one of the Owner Developer's strata lots, if the Owner Developer still owns one or more strata lots.

7. Documents to be Prepared by the Owner Developer for the First AGM

The Owner Developer must prepare three documents for the First AGM, these are:

- the Notice of the First AGM, which sets out:
 - a description of the matters to be voted on; and
 - the exact wording of resolutions requiring a unanimous or $\frac{3}{4}$ vote.
- an annual budget of the strata corporation, which details:
 - the opening balance in the operating fund and contingency reserve fund, which is the surplus or deficit from the year or partial year just ending;
 - the estimated income from all sources other than strata fees, itemized by source;
 - a list of the estimated expenditures from the operating fund, including a list of all expenditures that relate exclusively to:
 - a type of strata lot identified as a type in a bylaw;
 - limited common property; and
 - strata lot repair and maintenance that the strata corporation has taken responsibility for, by bylaw.
 - the total of all estimated expenditures from the operating fund;
 - the total of all contributions to the operating fund;
 - the total of any contributions to the contingency reserve fund;
 - each strata lot's monthly contribution to the operating fund and the contingency reserve fund - this sum is called a strata fee; and
 - the estimated balance in the operating fund and contingency reserve fund at the end of the fiscal year.
- a financial statement, from the first day of the period covered by the interim budget to a date that is within six weeks of the First AGM. The financial statement must set out:
 - the opening and current balance in the operating fund;
 - the opening and current balance in the contingency reserve fund;
 - the details of the strata corporation's income from all sources, except special levies;
 - the details of expenditures from the operating fund, including details of any unapproved expenditures;
 - the details of expenditures from the contingency reserve fund, including details of any unapproved expenditures; and

- income and expenditures by special levy, if any.

8. Providing Notice of the First AGM

The Owner Developer must distribute the Notice of the First AGM, proposed budget and financial statements to:

- all owners;
- mortgagees who have given the strata corporation a “Mortgagee’s Request for Notification” (Form C);
- tenants who have been assigned the owner’s right to vote, by either:
 - being a family member as defined in the Regulations;
 - entering into a lease of three years or more; or
 - the landlord delivering a written notice to the strata corporation which discloses the terms of the voting assignment.

The Notice and accompanying documents must be delivered to all persons entitled to notice of the First AGM two weeks prior to the date of the First AGM. [For a more detailed explanation of how to deliver notice of an AGM, please refer to “*Guide 7: How to Prepare for an AGM*”.]

9. Documents Which the Owner Developer Must Present at the First AGM

At the First AGM the Owner Developer must give the strata corporation copies of the following:

- all plans required to obtain a building permit and any amendments to the building permit plans;
- any document in the Owner Developer’s possession that indicates the location of pipes, wires, cables, chutes, ducts, or other service facilities that are not located as shown on the plan or plan amendments filed with the building permit issuer;
- all contracts entered into by the strata corporation;
- any Disclosure Statement and any amendments filed under the *Real Estate Development Marketing Act*;
- any Rental Disclosure Statement (Form J) filed by the Owner Developer with the Superintendent of Real Estate;
- the registered strata plan from the Land Title Office and any plan amendments;
- the names and addresses of contractors, subcontractors and persons who primarily supplied labour or materials to the project;
- the names and addresses of technical consultants, including building envelope specialists, if any;

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- the name and address of any project manager;
- all warranties, manuals, schematic drawings, operating instructions, service guides, manufacturers' documentation and other similar information relating to common property or common assets;
- minutes of special general meetings, including the results of any votes;
- a list of owners, with their strata lot addresses, mailing addresses if different, strata lot numbers as shown on the strata plan, parking stall numbers, if any, and unit entitlements;
- names and addresses of mortgagees who have filed a "Mortgagee's Request for Notification" (Form C);
- names of tenants;
- assignments of voting or other rights by landlords to tenants;
- books of account showing money received and spent and the reason for the receipt or expenditure;
- the Act and Regulations;
- a copy of the strata corporation's bylaws and rules;
- resolutions that deal with changes to common property, including the designation of limited common property;
- any waivers of special general meetings;
- any decision of an arbitrator or judge in a proceeding in which the strata corporation was a party, and any legal opinions obtained by the strata corporation;
- income tax returns, if any;
- correspondence sent or received by the strata corporation and council;
- bank statements, cancelled cheques and certificates of deposit;
- any "Information Certificates" (Form B) issued by the strata corporation; and
- the strata corporation's first annual budget for approval by the strata corporation.

If the Owner Developer fails to provide the above documents, and the strata corporation must pay money to obtain any missing documents, the Owner Developer will owe that sum of money to the strata corporation. This sum can be collected by the strata corporation registering a lien against one of the Owner Developer's strata lots, if the Owner Developer still owns one or more strata lots.

10. Conducting the First AGM

The Act provides that the chair of the First AGM will be one of the following:

- the Owner Developer acting personally or through an agent; or

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- an individual elected by the voters who are present at the meeting in person or by proxy, if the Owner Developer is unwilling or unable to act as chair.

If the Owner Developer still owns one or more strata lots, the Owner Developer is entitled to:

- participate in the meeting as an owner and vote with the voting entitlement of all retained strata lots; and
- be eligible for election to the strata council. If the Owner Developer is elected to the strata council, he or she will still have a duty to act in the best interests of the strata corporation.

11. Expenses Exceeding Interim Budget

During the period beginning one month after the first conveyance of a strata lot until the First AGM, if the actual strata corporation expenses exceed the estimated expenses set out in the interim budget, the Owner Developer must pay the difference to the strata corporation within eight weeks of the First AGM.

Owner Developers who seriously underestimate the interim budget must pay additional amounts to the strata corporation. If the actual expenses are more than that set out in the interim budget by:

- 10% to under 20%, the Owner Developer must pay an additional amount which is equivalent to the excess multiplied by two.
- 20% or more, the Owner Developer must pay an additional amount which is equivalent to the excess multiplied by three.

Any penalty owing to a strata corporation by an Owner Developer underestimating the interim budget, can be collected by the strata corporation registering a lien against **one** of the Owner Developer's strata lots, if the Owner Developer still owns one or more strata lots.

12. Seeding the Contingency Reserve Fund

At the time of the first conveyance of a strata lot to a purchaser, the Owner Developer must establish a contingency reserve fund by making a minimum contribution to that fund.

If the first conveyance of a strata lot in a development occurs no later than one year after the deposit of the strata plan, the minimum contribution must be 5% of the estimated operating expenses as set out in the interim budget.

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If the first conveyance of a strata lot in a development occurs later than one year after the deposit of the strata plan, the minimum contribution is the lesser of:

- 5% of the strata corporation's operating expenses as set out in the interim budget, multiplied by the number of years or partial years since the deposit of the strata plan; and
- 25% of the strata corporation's operating expenses as set out in the interim budget.

13. After the First AGM

The Owner Developer must do the following after the First AGM:

- within one week of the First AGM, transfer control of the strata corporation's money, keys, and garage openers to the new strata council;
- ensure that the strata corporation's insurance coverage continues for at least four weeks from the date of the First AGM; and
- deliver an updated financial statement to the strata council within eight weeks of the First AGM. The updated financial statement must be updated to the date the new budget takes effect, or, if no budget was approved at the First AGM, the date of the First AGM.

14. Marketing of Strata Lots by Owner Developers

The Standard Bylaws contain the following provisions which deal with the marketing of strata lots:

- an Owner Developer who has an unsold strata lot may carry on sales functions that relate to its sale, including the posting of signs; and
- an Owner Developer may use a strata lot that the Owner Developer owns or rents, as a display lot for the sale of other strata lots in the strata plan.

References:

Sections of the Act: 1, 2, 5-7, 10-23, 45, 116, 121, 245

Sections of the Regulations: 3.1-3.3, 14.6, Part 17

Standard Bylaw: 30

A Summary of Triggering Events for Owner Developers

Triggering Events	Owner Developer's Obligations Or Other Requirements Which Are Triggered By The Event
Building is developed	The Owner Developer must pay all expenses for the development, until one month after the first conveyance of a lot.
First purchase contract signed by Owner Developer	Prior to this occurrence, the Owner Developer must have prepared a 12 month interim budget and delivered it to the first purchaser. All subsequent purchasers must get a copy of the budget prior to entering into contracts.
Strata Plan is filed	The Owner Developer acts on behalf of the strata corporation until the strata council is elected at the First AGM.
First conveyance to a purchaser	If the first conveyance of strata lot is no later than 1 year after the deposit of the strata plan, the Owner Developer must contribute 5% of the estimated operating expenses set out in interim budget to the contingency reserve fund. If the first conveyance of strata lot is later than 1 year after the deposit of the strata plan, the Owner Developer must contribute an amount to contingency reserve fund, as set out in section 12.
After first conveyance	The Owner Developer can no longer enter into a contract with the strata corporation, unless the contract is approved by a unanimous vote at a special general meeting. Most $\frac{3}{4}$ votes of the strata corporation can only be passed by unanimous resolution at a special general meeting, until the First AGM.
One month after first conveyance	The Owner Developer stops paying for all of the expenses of the development, and the Strata Corporation pays these expenses, as per the budget.
50 % plus 1of lots conveyed to purchasers	If this occurs before the 9 month period from the filing of the strata plan, the Owner Developer must hold the First AGM, within 6 weeks of this occurrence.
9 months from the date strata plan is filed	If there is less than 50 % plus 1 of the strata lots conveyed to purchasers, the Owner Developer must hold the First AGM within 6 weeks of this date.

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Triggering Events	Owner Developer's Obligations Or Other Requirements Which Are Triggered By The Event
First AGM	The Owner Developer must provide the strata corporation with the first annual budget, and other information, including: building permit plans, strata corporation contracts, warranties and manuals for common property and assets, and all usual records. The strata council is elected, and the Owner Developer no longer acts for the strata corporation.
Within 1 week after First AGM	The Owner Developer must transfer control of the strata corporation's money, keys, and garage openers to the new strata council.
4 weeks after the First AGM	The Owner Developer must ensure that strata corporation's insurance coverage is in place until this date.
8 weeks after the First AGM	The Owner Developer must have delivered the strata corporation's updated financial statement prior to this date. The statement must end with the date that the new budget takes effect, or the date of the First AGM, if no new budget was approved.
2 years after First AGM	The Owner Developer must keep and make available to the strata corporation all financial records up to the date that control of the strata corporation money is transferred to the strata council.

Guide 3: The Role and Responsibilities of Strata Corporations

1. The Creation of the Strata Corporation

A strata corporation is created to divide a building(s) and/or a parcel of land into separate components individually owned and common components owned by all of the owners.

The strata plan will show the separately and commonly owned components of the building(s) and/or land:

- separately owned components are referred to as “strata lots”; and
- commonly owned components are referred to as “common property”.

A strata corporation is a legal entity created by the deposit of a strata plan in the Land Title Office.

The Land Title Office will assign a number to the strata corporation. This will become the legal identity of the strata corporation. Examples of strata corporation numbers are LMS 1234 or KAS 9876.

The name of the strata corporation is “The Owners, Strata Plan, (*the registration number of the strata plan*)”.

Strata corporations are created under the *Strata Property Act* (the “Act”), and not the *Business Corporations Act*. This means that there is no incorporation certificate for a strata corporation, and the Registrar of Companies does not regulate strata corporations.

2. What is a Strata Corporation?

The strata corporation is a legal entity with all of the powers of a natural person who has full capacity. This means that it can sue others, be sued by others, enter into contracts with others and hire employees.

The owners of the strata lots are the members of the strata corporation. If a strata corporation is responsible for paying a judgment, the owners are personally liable to pay a portion of the judgment in proportion to their unit entitlement.

A strata corporation does not have limited liability like a company.

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Please note: the Standard Bylaws can be amended.

3. What Does a Strata Corporation Do?

The strata corporation is responsible for managing and maintaining the common property and assets of the strata development for the benefit of all of its owners.

The specific obligations of the strata corporation are usually performed by the strata council, or agents or employees which it hires.

Additionally, the strata council will also perform its own obligations which are imposed by the Act and Regulations on the strata council, and will benefit the strata corporation.

The specific obligations of the strata corporation which are set out in the Act and Regulations are:

- preparing, retaining and making accessible various records *including depreciation reports*;
- holding general meetings, or obtaining the appropriate waiver of general meetings;
- giving notices of general meetings;
- preparing “Information Certificates” (Form B) and “Certificates of Payment” (Form F);
- ensuring that the strata corporation address is correct at the Land Title Office;
- maintaining and repairing common property, except any limited common property that the owners may have to maintain under the bylaws;
- complying with work orders which deal with common property;
- maintaining a contingency reserve fund which is accounted for separately from the operating fund;
- paying common expenses;
- *for strata corporations with more than 4 units obtaining a depreciation report or holding an annual $\frac{3}{4}$ vote to waive this requirement¹*
- determining the amount of contributions which owners must make to the operating fund and the contingency reserve fund;
- preparing annual budgets;
- informing owners of any changes to strata fees;
- obtaining adequate insurance coverage; and
- informing owners if the strata corporation is sued.

¹ References include the Strata Property Act Section 94 and the Strata Property regulation 6.2
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4. **Strata Corporation Decision Making**

Decisions of the strata corporation are made by either the eligible voters in the strata corporation or the strata council in the following manner:

- the Act or Regulations may require that a matter be resolved by a **unanimous vote**. These decisions must be made by all the voters in the strata corporation;
- the Act or Regulations may require that a matter be resolved by a **$\frac{3}{4}$ vote**. These decisions must be made by $\frac{3}{4}$ of all the eligible voters who are present in person or by proxy at a general meeting, and who have not abstained from voting;
- the Act or Regulations may require that a matter be resolved by a **majority vote** of the strata corporation (e.g. approving budget, directing or restricting council, ratifying rules, continuing the first strata management contract). These decisions must be made by more than half of all the eligible voters who are present in person or by proxy at a general meeting, and who have not abstained from voting;
- if a matter is not required by the Act or Regulations to be decided by a specific vote of the strata corporation it can be resolved by a majority vote of the strata corporation even if the matter is usually decided by the strata council. These decisions must be made by more than half of all the eligible voters who are present in person or by proxy at a general meeting, and who have not abstained from voting;
- any matter that is not required by the Act or Regulations to be resolved by a specific vote of the strata corporation, or has not already been resolved by the strata corporation, can be made by the strata council. These decisions usually relate to the daily management of the strata corporation.

5. **Democratic Principles**

Strata corporations are democratic, and run on democratic principles, such as the following:

- equal voting:
 - usually, each residential strata lot will have one vote; and
 - usually, commercial strata lots will have a vote that may be less or greater than one, but it will be in proportion to its size compared to the average size of other residential (in mixed developments) or commercial lots; and
- if there is a tie vote at an annual or special general meeting, the president or vice president (if the president is absent or unable or unwilling to vote) may break the tie by casting a second, deciding vote, if the bylaws provide for this.
- election of representatives:
 - at each annual general meeting, the owners will elect a strata council to manage the strata corporation.

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- majority vote:
 - if an issue is before the strata corporation at a general meeting, the owners can direct and control the strata council with a simple majority vote, unless the Act requires that a matter be approved by a vote by persons holding $\frac{3}{4}$ or all of the votes.
- right to raise issues:
 - owners can add matters to a general meeting agenda, if they can get persons holding 20% of the votes to agree to it; and
 - owners can requisition a special general meeting for a particular purpose if they can get persons holding 20% of the votes to agree to it.

6. Community Interest of a Strata Corporation

A strata corporation creates a community of strata owners. The right of an owner to use and enjoy his or her property will be limited by rules, bylaws and decisions of the strata corporation which are in the community interest. Please see "*Guide 13: How to Create or Amend Bylaws and Rules*" for more information on bylaws and rules in strata corporations.

The obligations and limitations placed on a strata lot owner may be significantly greater than an owner who lives in a non-strata titled house.

For instance:

- strata lots may be separated by interior walls, floors and ceilings that are just several inches thick, and the strata corporation may have bylaws which are intended to control noise, such as a bylaw prohibiting the installation of hardwood flooring; and
- a roof may be in need of repair, but an owner wishes to put off the repair, as he or she cannot afford to pay his or her share of the repair. The strata lot owner may have no choice but to pay the special assessment for the repair, as getting the roof fixed is in the community interest and an obligation of the strata corporation.

References:

Sections of the Act: 2-4, 25-27, 35, 36, 38, 40-46, 50, 53, 59, 62, 72, 83, 91-93, 95, 103, 106, 115, 149152, 154, 166, 167, 170, 171, 247, 248

Guide 4: The Role and Responsibilities of Strata Councils

1. General Role of the Strata Council

The strata council's role is to:

- act as the managing body for the strata corporation;
- make daily decisions that enable the strata corporation to operate smoothly; and
- operate within any restrictions created by the Act, Regulations, bylaws, or a majority vote of the owners.

The Act states that the strata council's role is to: "exercise the powers and perform the duties of the strata corporation, including the enforcement of bylaws and rules".

The strata council can hire a strata manager to perform some or most of the functions of the strata council. However, if a strata council has delegated its powers to a strata manager, the strata council is still ultimately responsible for ensuring that its obligations under the Act are fulfilled.

2. Limiting the Powers of the Strata Council

The strata corporation can pass a resolution by majority vote at general meetings to direct or restrict the actions of the strata council.

However, the strata corporation can never restrict or limit the strata council if the restriction or limitation:

- is contrary to the Act, Regulations, or bylaws;
- interferes with the strata council's ability to decide based on the facts whether:
 - a person has breached a bylaw or rule;
 - a person should be fined;
 - a person should be restricted from using a recreational facility;
 - a person should be required under section 133(2) to pay the reasonable costs of remedying a contravention of the bylaws or rules; or
 - an owner should be exempted under section 144 from a bylaw that limits rentals.

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3. Eligibility to Sit on Strata Council

The following persons are eligible to sit on strata council:

- all owners, including existing or past strata council members unless:
 - their strata lot can be liened for money owing to the strata corporation, and a bylaw permits this restriction;
 - there are multiple owners of one strata lot, in which case, only one owner can sit on the strata council, unless all owners are on council (but each lot only has one vote). The Standard Bylaws provide that if there are fewer than four strata lots or owners, then all owners must sit on the strata council;
- representatives of corporate owners;
- tenants who have been assigned the owner's right to vote, by either:
 - being a family member, as defined in the Regulations;
 - entering into a lease of three years or more; or
 - the landlord delivering a written notice to the strata corporation which discloses the terms of the voting assignment;
- different classes of persons, if a bylaw is created to permit certain classes of persons to sit on strata council, such as spouses not registered on title or children of owners.

4. Election of Strata Council

The strata council is usually elected every year at the annual general meeting, in accordance with strata corporation bylaws.

The number of persons on the strata council is determined by the bylaws.

The number of strata council members set out in the Standard Bylaws is between three and seven members. However, if there are fewer than four lots or four owners, then all owners are required to sit on the strata council.

5. Strata Council Terms and Early Removal from Term

The following provisions dealing with strata council terms and the early removal from a term are set out in the Standard Bylaws:

- a current strata council term ends and a new strata council term begins at the end of the annual general meeting in which the new strata council is elected;
- a strata council member can be removed, with or without cause, by a majority vote of the owners at a general meeting, and the owners must then elect a replacement strata council member; and
- a petition item to remove a strata council requires 25% under the Standard Bylaws or in accordance with any amendment of the Standard Bylaws.

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- if a strata council member is unwilling or unable to perform his or her duties for two months or longer, he or she can be replaced by a new strata council member to be appointed by the existing members of strata council. The new strata council member will hold the seat for the remainder of the replaced member's term.

6. Remuneration (Pay)

Strata council members may be paid if their remuneration is permitted by one of the following:

- the bylaws;
- a resolution passed by a $\frac{3}{4}$ vote of the owners; or
- the annual budget.

7. Strata Council Meetings

The following provisions dealing with strata council meetings are set out in the Standard Bylaws:

- at the first meeting of the new strata council, members must elect from amongst themselves the following:
 - a president;
 - a vice-president;
 - a treasurer; and
 - a secretary.
- a member can hold more than one office, so long as it is not both president and vice-president;
- any strata council member can call a strata council meeting:
 - by giving other members at least one week's notice specifying the reason for the meeting; or
 - by giving less than one week's notice if:
 - the strata council members agree; or
 - the meeting is required to deal with an emergency situation, and strata council members either consent in advance of the meeting, or are unavailable to provide consent after reasonable attempts to contact them.

[Please refer to part 8 of this guide for an explanation about how the notice period runs.]

- an owner can requisition a strata council meeting to have a hearing, and the purpose of the hearing must be specified in a written application. A meeting requisitioned for a hearing must be held within four weeks and if a decision is required then the council must give a written decision within one week after the hearing;

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- minutes of strata council meetings need to be taken and the strata council must inform owners of the minutes of all strata council meetings within two weeks of the meeting;
- at the outset of a strata council meeting, members should determine if the required quorum under the bylaws is met;
- strata council members can attend a strata council meeting by electronic means, so long as all members (or participants) can communicate with one another;
- decisions at strata council meetings are made by a majority vote of strata council members;
- Under the Standard Bylaws, owners may attend strata council meetings as observers only, but they may not attend portions of meetings related to:
 - bylaw enforcement proceedings;
 - rental restriction bylaw exemption hearings; and
 - matters where a person's privacy would be unreasonably interfered with.

8. How the Notice Period Runs

Under the provincial government's Interpretation Act, if the reference to time in other Acts or legislation includes phrases such as "clear" days or weeks, or "at least" in reference to days or weeks, the time must be calculated by excluding the first day and the last day of the period. Another way of thinking about the days that must be excluded is to think that nothing can happen on those days.

Thus, when calculating the number of days within the one week notice period for calling a strata council meeting, the day the notice is given (Day 1 on the chart below) cannot be counted as one of the days. The strata council meeting cannot take place on the last day of the notice period (Day 8 on the chart below). It can only take place on any of the days following the last day of the notice period (Day 9 on the chart below).

Example of How the Notice Period Runs

Notice is Given	When the Notice Period Starts To Run	When The Notice Period Stops Running	When the Strata Council Meeting Can Be Held
Day 1	Day 2	Day 8	Day 9 or later

9. The Strata Council Member's Standard of Care

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

The Standard Bylaws provide that strata council members are not personally liable for anything they do or do not do in the course of acting as a strata council member, so long as they are acting honestly and in good faith.

However, strata council members will still be liable for judgments against the strata corporation in their capacity as owner.

The strata corporation can obtain errors and omissions insurance to insure strata council members for any liability resulting from mistakes incurred while acting as a strata council member.

10. Conflict of Interest

Strata council members must ensure that they refrain from acting in their capacity as a strata council member if their personal interests conflict directly or indirectly with those of the strata corporation.

Strata council members must:

- disclose any personal interest they have in a contract, transaction or matter under consideration by the strata corporation;
- disclose fully and promptly to the council the nature and extent of the interest;
- abstain from voting on the contract, transaction or matter, and;
- leave the council meeting
 - while the contract, transaction or matter is discussed, unless asked by council to be present to provide information, and
 - while the council votes on the contract, transaction or matter.

11. Specific Duties of the Strata Council

The specific duties of the strata council include the following:

- keeping a list of the names of owners and tenants, and similar documents;
- paying strata corporation bills;
- making themselves accessible by providing a telephone number or some other method of contact;
- entering into strata corporation contracts and supervising the performance of duties under those contracts;

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- hiring and supervising employees of the strata corporation;
- keeping all strata corporation records ***including depreciation reports or materials related to depreciation reports¹***;
- making records available for inspection and copying for the owners for a charge of not more than 25 cents per page;
- calling and conducting general meetings;
- completing “Information Certificates” (Form B) and “Certificates of Payment” (Form F);
- preparing the budget and financial statements;
- directing investments and expenditures;
- collecting strata fees and other money owed to the strata corporation;
- enforcing the bylaws and rules;
- obtaining adequate strata corporation insurance;
- approving strata lot alterations;
- granting owners and tenants short term exclusive use of common property; and
- exempting the application of rental restriction bylaws for individual owners based on hardship.

12. What if No One or Not Enough People are Willing to Sit on the Strata Council?

If no eligible person or not enough eligible people in a strata corporation are willing to sit on the strata council, then the strata corporation, or an owner, tenant, mortgagee or other person having an interest in a strata lot, may apply to the Supreme Court for the appointment of an administrator to exercise the powers and perform the duties of the strata corporation.

The court may appoint an administrator if, in the court’s opinion, the appointment of an administrator is in the best interest of the strata corporation.

This may result in the administrator taking on the responsibilities of the strata council, but it may also eliminate or interfere with the normal democratic functioning of the strata corporation and the rights of owners under the Act.

In particular, the court may:

- appoint the administrator for an indefinite or set period;
- set the administrator’s remuneration (which will be paid by the owners as a strata corporation expense);

¹ *The Strata Property Act Section 35 discusses strata corporation records*

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- order that the administrator exercise or perform some or all of the powers and duties of the strata corporation; and
- relieve the strata corporation of some or all of its powers and duties.

Unless the Supreme Court otherwise orders, an administrator must obtain approval of the owners, by a resolution passed by a majority vote, a $\frac{3}{4}$ vote or a unanimous vote (as the case may be), for all matters that require owners' approval under the Act.

References:

Sections of the Act: 4, 25-29, 31-36, 40-51, 70, 76, 92-98, 103, 106, 112-118, 129-138, 144, 151, 174

Sections of the Regulations: 4.1, 4.2, 4.4, 6.4, 6.7, 6.10

Standard Bylaws: 5, 6, 9-14, 16-22

Guide 5: the Role and Responsibilities of Strata Lot Owners

1. WHO ARE STRATA LOT OWNERS?

The Act makes numerous references to owners. Under the Act, an owner includes an Owner Developer, and can be any of the following persons:

- the registered owner of a strata lot, and includes trustees who hold title for the benefit of someone else;
- the registered owner of a leasehold strata lot in a leasehold strata plan (who is referred to in the Act as a "leasehold tenant"), and includes trustees who hold title for the benefit of someone else;
- the person registered on title as a holder of an agreement for sale of a strata lot, and in this case, the registered owner will not be an owner under the Act; and
- the registered holder of a life estate (which is referred to in the Act as a "tenant for life") and in this case, the registered remainder owner will not be an owner under the Act.

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The following persons are not defined as owners under the Act:

- spouses of registered owners or tenants;
- beneficiaries, who may live in or collect rent from a strata lot, but are not registered on title as owner or tenant;
- tenants or sub-tenants, who may hold a long term lease or rent on a month to month basis; and
- tenants with a lease that expires upon the tenant's death.

2. WHAT DO OWNERS OWN?

An owner of a strata lot owns the following:

- his or her strata lot
 - usually a strata lot's boundaries are at the center of walls, ceilings and floors, but these boundaries will be different if the strata plan shows a different boundary;
 - in a bare land strata plan, the strata lot will consist of the land and not the building situated on the strata lot; and
- a share, as a tenant in common with other strata lot owners, of the common property and assets of the strata corporation that is based on their unit entitlement.

3. THE RIGHTS OF STRATA LOT OWNERS

Owners have the right to:

- vote at a general meeting, unless:
 - pursuant to a bylaw they are ineligible to vote on resolutions needing to be passed by a majority or $\frac{3}{4}$ vote, due to unpaid strata fees or other monies owing;
 - they have assigned their right to vote on certain matters to tenants or mortgagees;
 - they no longer have a vote due to an automatic assignment to:
 - a tenant who is a family member, as defined in the Regulations;
 - a residential tenant with a lease of three years or greater; or
 - they lack the capacity to vote or are under sixteen years of age.
- under the Standard Bylaws, vote by secret ballot if requested at a general meeting;
- demand certain records from the strata council;
- under the Standard Bylaws, attend strata council meetings as observers for matters other than bylaw contravention, rental hardship, or matters affecting an individual's privacy;
- direct the actions of the strata council by majority vote at general meetings;
- limit the power of the strata council by majority vote at general meetings;
- requisition general meetings with a petition of 20% of the owners;
- add matters and resolutions to a general meeting agenda with a petition of 20% of the owners;
- obtain insurance for:
 - loss or damage to his or her:
 - strata lot; and
 - fixtures built or installed on the strata lot by the Owner Developer as part of the original construction for perils not covered by the strata corporation insurance or for amounts in excess of any strata corporation insurance;
 - fixtures in the owner's strata lot that were not built or installed by the Owner Developer as part of the original construction;
 - improvements to fixtures built or installed on the strata lot by the Owner Developer as part of the original construction;
 - loss of the rental value of his or her strata lot; and
 - liability for property damage and bodily injury that occurs either on his or her strata lot or on the common property.

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- seek a court or arbitration order to prevent or stop unfair acts of the strata corporation or strata council;
- seek a court or arbitration order to prevent a person who holds more than 50% of the votes, including proxies, from exercising those voting rights;
- seek a court or arbitration order to require the strata corporation to perform a duty under the Act, Regulations, bylaws or rules; and
- seek a court or arbitration order to require the strata corporation to stop contravening the Act, Regulations, bylaws or rules.

Owners do not have a right to:

- place items on the agenda of annual or special general meetings, unless 20% of the owners petition to have items on the agenda;
- requisition general meetings, unless 20% of the owners petition to have a general meeting for a specific purpose;
- claim any interest in the Contingency Reserve Fund upon selling his or her strata lot.
- under the Standard Bylaws:
 - participate in discussions or decision making at strata council meetings, if they attend as observers;
 - refuse entry to their strata lot by any authorized person:
 - in an emergency, even though no notice has been given; and
 - to inspect and repair parts of common property or the strata lot that the strata corporation is responsible to maintain or insure, if 48 hours written notice has been given.
- alter certain parts of the strata lot without written strata council approval;
- alter common property or limited common property without written strata council approval.

4. THE OBLIGATIONS OF STRATA LOT OWNERS

Strata lot owners **must** do the following:

- pay regular strata fees, usually in proportion to their unit entitlement, on the date set out in the bylaws, which is the first day of each month under Standard Bylaw 1;
- maintain and repair all parts of their strata lot and limited common property which are required by the bylaws;
- understand and observe the bylaws and rules of the strata corporation;

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- use property in a manner required by the bylaws. The Standard Bylaws require that owners:
 - not cause a nuisance to others;
 - not make unreasonable noise;
 - not use their strata lot for an illegal purpose; and
 - leash and secure pets in common areas.
- pay special levies to the strata corporation if the special levy has been approved by the necessary vote;
- under the Standard Bylaws, within two weeks of becoming an owner, inform the strata corporation of their name, strata lot number, and any mailing address outside the strata development; and
- comply with work orders from a local authority to do work to his or her strata lot.

5. **WHAT OWNERS IN A STRATA DEVELOPMENT SHOULD BE WILLING TO DO**

In order for a strata corporation to function effectively, strata lot owners **should** be willing to do the following:

- participate in managing the strata corporation by sitting on the strata council;
- attend general meetings to participate in important discussions and decision making about the strata corporation;
- educate themselves about the Act and Regulations, so the strata corporation functions as it should;
- compromise individual interests for the good of the strata corporation as a whole; and
- take responsibility for resolving disputes between owners through discussion, mediation and arbitration, as there is no government body that can become involved in strata affairs.

References:

Sections of the Act: 1, 25, 27, 36, 43, 46, 53-55, 66, 68, 84, 92, 99, 101, 107, 108, 142, 147, 148, 161, 164
Standard Bylaws: 1-8, 17, 27

Guide 6: The Role and Responsibilities of Tenants and Landlords in Stratas

1. TENANTS LIVING IN STRATA PROPERTIES

Under the *Strata Property Act* (the Act) a tenant:

- is a person who rents all or part of a strata lot; and
- includes a sub-tenant.

In addition to the *Strata Property Act* and strata corporation rules and bylaws, residential strata tenancies in British Columbia are governed by the *Residential Tenancy Act (RTA)*. More information on the RTA and the rights and responsibilities of tenants and landlords can be found at the Residential Tenancy Branch website here: <http://www.rto.gov.bc.ca/default.aspx>

Under the *Strata Property Act*, some tenants will have more rights and obligations than other tenants (see parts 4, 5 and 6 of this guide) if they:

- rent a commercial or residential strata lot and their landlord has assigned to them extra rights and obligations;
- lease a residential strata lot for a term of three years or greater; or
- are a family member, as defined in the Regulations.

2. THE RIGHTS OF TENANTS

All tenants have the following rights under the Act:

- to obtain a copy of the current bylaws and rules and a “Notice of Tenant’s Responsibilities” (Form K) from the landlord;
- to inspect at no charge and obtain copies of the bylaws and rules from the strata corporation;
- to request that the strata council grant them short term exclusive use of common property;
- to the same access to any dispute resolution methods as an owner;

[For more information on resolving disputes please refer to “*Guide 25: What to Know about Resolving Complaints*”.]

Right to End Tenancy

If the rental agreement contravenes a strata corporation rental restriction bylaw, then tenants have the right to end their tenancy agreement under the Act, without penalty, within ninety days of learning of the contravention and to receive reasonable moving expenses of up to one month’s rent from the landlord, by giving notice to the landlord.

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[Note: if the tenancy agreement is in contravention of a rental restriction bylaw, the tenant cannot be found in contravention of the rental restriction bylaw.]

Tenants have the right to end their tenancy agreement, without penalty, within ninety days of learning of the contravention and to receive reasonable moving expenses of up to one month's rent from the landlord, by giving notice to the landlord, if the landlord:

- does not give the tenant a copy of the bylaws and rules and a "Notice of Tenant's Responsibilities" (Form K); and
- fails to provide the strata corporation with a copy of a Form K signed by the tenant.

[Note: a tenant is still bound to comply with the strata corporation's bylaws and rules, even if the landlord has failed to comply with the above.]

Under the Standard Bylaws, all tenants have the following rights:

- to attend annual and special general meetings, unless a majority vote is passed to exclude them from the meeting; and
- to participate in discussions at annual and special general meetings if permitted by the chair.

3. **THE OBLIGATIONS OF TENANTS**

All tenants have obligations under the Act to:

- follow the bylaws and rules of the strata corporation;
- comply with the Act and Regulations;
- sign a "Notice of Tenant's Responsibilities" (Form K) when asked to do so by the landlord; and
- pay a user fee for the use of common property pursuant to a bylaw, if the user fee would also apply to the owner.

Under the Standard Bylaws, all tenants have obligations to:

- advise the strata corporation of their name, if it is requested;
- permit entry to their strata lot by any authorized person;
 - in an emergency, even though no notice has been given;
 - to inspect and repair parts of common property or the strata lot that the strata corporation is responsible to maintain or insure, if 48 hours written notice has been given.
- not cause a nuisance to others;
- not make unreasonable noise;
- not use their strata lot for an illegal purpose; and
- leash and secure pets in common areas.

[Note: Under the Act, if a tenant is responsible to pay the cost of remedying a bylaw or rule contravention or a fine for a bylaw or rule breach, the strata corporation can collect this sum from the landlord and owner. The tenant will then owe this sum to the owner (landlord). However, the owner's responsibility to pay the cost of remedying contraventions or fines on behalf of the tenant cannot be assigned to the tenant.]

4. **THE RIGHTS AND OBLIGATIONS OF RESIDENTIAL TENANTS WITH LEASES OF THREE YEARS OR GREATER ("LONG TERM TENANTS")**

Residential long term tenants have the same rights and obligations as owners (the landlord) under the Act, Regulations, bylaws and rules (with the exceptions noted below) for the duration of the lease.

However, before exercising any rights of the owner (landlord), long term tenants must provide the strata corporation with written notice of:

- the time period of the lease; and
- their name.

Furthermore, long term tenants may never, without the consent of the owner, exercise any right of an owner to:

- acquire or dispose of land;
- cancel or amend the strata plan; or
- do anything which would affect the owner's interest in the strata lot, common property or land that is a common asset.

Some of the specific obligations of long term tenants are:

- to pay strata fees;
- to pay special levies that are due within the term of the lease; and
- to maintain and repair parts of the strata lot and limited common property that the bylaws make the owner responsible to maintain and repair.

Some of the specific rights of long term tenants are:

- to access and obtain strata corporation records;
- to attend and vote at special or annual general meetings;
- to receive strata corporation notices; and
- to be eligible for election to the strata council.

5. THE RIGHTS AND OBLIGATIONS OF TENANTS WHO HAVE BEEN ASSIGNED RIGHTS BY THE LANDLORD

Landlords may assign any of their rights and obligations (with the exception noted below) to tenants provided that they give written notice of the assignment to the strata corporation stating:

- what rights and obligations are assigned to the tenant;
- the name of the tenant; and
- the time period that the assignment is effective.

[Exception: The owner's responsibility to pay the cost of remedying contraventions or fines on behalf of the tenant cannot be assigned to the tenant.]

6. TENANTS WHO ARE FAMILY MEMBERS

A family member is defined in the Regulations as:

- a spouse of the owner;
- a parent or child of the owner;
- a parent or child of the spouse of the owner.

Spouse of the owner includes an individual who has lived and cohabited with the owner, for a period of at least two years at the relevant time, in a marriage like relationship, including persons of the same gender.

A family member who rents a strata lot will have all of the rights and obligations of long term tenants (set out in part 4 of this guide). Any rental restriction bylaw will not apply to a family member who is a tenant.

7. WHO IS A LANDLORD?

A landlord is:

- an owner who rents a strata lot to a tenant; or
- a tenant who rents a strata lot to a subtenant.

In addition to the *Strata Property Act* and strata corporation bylaws and rules, residential strata tenancies in British Columbia are governed by the *Residential Tenancy Act (RTA)*. More information on the *RTA* and the rights and responsibilities of tenants and landlords can be found at the Residential Tenancy Branch website here:

<http://www.rto.gov.bc.ca/default.aspx>

8. THE RIGHTS OF LANDLORDS

A landlord has a right under the *Strata Property Act* (the Act) to:

- assign all or some of his or her powers and duties to a tenant, except his or her responsibilities in relation to fines or other costs for the breach of bylaws or rules by a tenant; and
- collect any sums from the tenant paid to the strata corporation for:
 - fines the tenant owes to the strata corporation for bylaw or rule breaches; and
 - remedying a tenant's contravention of the bylaws and rules.

9. THE OBLIGATIONS OF LANDLORDS

A landlord has the following obligations under the Act:

- to give tenants a copy of the current bylaws and rules and a "Notice of Tenant's Responsibilities" (Form K);
- to give the strata corporation a copy of the Form K signed by the tenant within two weeks of the renting to the tenant;
- to pay to the strata corporation his or her tenant's fines and any costs incurred for remedying a contravention of the bylaws or rules, if required by the strata corporation;
- to pay his or her tenant's reasonable moving costs up to a maximum of one month's rent if the tenant ends a tenancy within ninety days of learning of the contravention due to the landlord failing:
 - to provide the tenant with a copy of the bylaws and rules; or
 - to provide a copy of the signed Form K to the strata corporation.
- to pay his or her tenant's reasonable moving costs up to a maximum of one month's rent if the tenant ends a tenancy within ninety days of learning of the contravention due to the rental agreement contravening a rental restriction bylaw; and
- to not interfere with the strata lot, common property, or land that is a common asset in a way that would be unreasonable if a three year lease or longer has been entered into with a tenant.

10. THE RIGHTS OF STRATA CORPORATIONS

A strata corporation has the following rights under the Act in relation to tenants:

- it may fine a tenant or assess against a tenant the cost of remedying a contravention of a bylaw or rule;
- it may collect any sums owing to it by a tenant for a bylaw or rule breach; and

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- it may grant or remove a grant of short term exclusive use of common property to a tenant.

A strata corporation has the following right under the Standard Bylaws in relation to tenants:

- it can by majority vote, ask a tenant to leave a general meeting if the tenant does not have the right to vote.

11. **The Obligations of Strata Corporations**

A strata corporation has the following obligations under the Act:

- it must give the landlord a copy of any written notice provided by a tenant which gives notice of the assignment of powers and duties under a lease of three years or more;
- it must provide for inspection or provide copies of all records, bylaws and rules to a tenant who has been assigned these rights by the landlord;
- it must provide former tenants, who were assigned the landlord's right to inspect records and documents as referred to in Section 35 of the Act, access to the records that relate to the time of their tenancy;
- it must provide access to the bylaws and rules to the tenant even when the landlord has not assigned the tenant the right to inspect or obtain records or documents of the strata corporation; and
- it must give notice to tenants of all meetings when the tenant has been assigned the owner's right to vote and the strata corporation has received notice of the assignment.

A strata corporation has the following obligation **under the Standard Bylaws**:

- it must allow, if permitted by the chair, a tenant to participate in discussion at an annual or special general meeting even if the tenant does not have the right to vote.

12. **Eviction of a Tenant**

A landlord can evict a residential tenant if the tenant repeatedly or continually contravenes a reasonable and significant bylaw or rule.

The strata corporation may be able to evict a residential tenant who repeatedly breaches reasonable and significant bylaw or rules, if there is serious interference with the rights of other persons in the strata development. Readers should seek professional advice if they need to determine specific legal rights and duties which may apply in their particular situations.

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References:

Sections of the Act: 1, 28, 35, 36, 45, 54, 76, 110, 124, 125, 129-135, 137, 138, 142, 145-148, 164, 165, 173, 174, 173, 175, 177, 178

Standard Bylaws: 3, 4, 7, 26

Please also see

- *Residential Tenancy Act* information which is available at the Residential Tenancy Branch website: <http://www.rto.gov.bc.ca/default.aspx>
- *Strata Property Guide 14: How to Enforce Bylaws and Rules*
- *“Strata Property Guide 15: Rental Permitted within a Strata Corporation”*

Guide 7: How to Prepare for an Annual General Meeting (“AGM”)

1. Calling the Meeting

An Annual General Meeting (“AGM”) must be held every year within two months after the fiscal year end of the strata corporation, unless the AGM is waived.

An AGM can be waived if all eligible voters waive, in writing, the requirement to hold an AGM and if they pass resolutions in writing to:

- approve next year’s budget;
- elect the strata council by acclamation; and
- deal with any other business.

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2. Documents to Prepare

The following documents should be prepared for the AGM:

- the Agenda;
 - the strata council determines the agenda; but
 - persons holding 20% of the votes can demand in writing that a resolution or matter be added to the agenda.
- the budget and financial statements;
- the exact wording of resolutions needed to be passed by a $\frac{3}{4}$ or unanimous vote; and
- the notice of the AGM (the "Notice") that must be given to all persons who are entitled to receive notice, and the Notice must include:
 - a description of matters to be voted on;
 - the exact wording of resolutions that need to be passed by a $\frac{3}{4}$ or unanimous vote;
 - the budget and financial statements; and
 - all matters or resolutions that are on the agenda by the written demand of 20% of the eligible voters.

3. Persons Entitled to Receive Notice

The strata corporation must give the Notice two weeks before the AGM date to the following persons:

- every strata lot owner;
- every mortgagee who has filed a “Mortgagee’s Request For Notification” (Form C); and
- every tenant who:
 - has been assigned a right to vote;
 - is a family member, as defined in the Regulations; or
 - has a lease of three years or more; and if the strata corporation has received notice of the assignment or leasing arrangements.

As long as the strata corporation has made reasonable attempts to give the Notice to all necessary persons, no vote taken at an AGM will be invalid because someone has not received the Notice.

4. Methods of Giving Notice

Notice of an AGM can be given in the following ways:

- if a person has provided the strata corporation with an address for receiving notices that is outside of the strata development, then Notice can be delivered:
 - by personally leaving it with the person; or
 - by mailing to the address provided by the person.
- if a person has not provided the strata corporation with an address for receiving notices that is outside of the strata development, then Notice can be delivered:
 - by personally leaving it with the person;
 - by leaving it under the door of the person’s strata lot;
 - by leaving it with an adult occupant of the person’s strata lot;
 - by mailing to the strata lot address;
 - by putting into the mail box or mail slot for the strata lot; or
 - by faxing it to a fax number provided by the person.
 - by emailing it to an email address provided by the person.
- if Notice has been given by any of the above methods, except by giving it to the person, the Notice is deemed to be received by the person four days after it was given.

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5. How the Notice Period Runs

Under the provincial government’s *Interpretation Act*, if the reference to time includes phrases such as “clear” days or weeks, or “at least” in reference to days or weeks, the time must be calculated by excluding the first day and the last day of the period.

Another way of thinking about the days that must be excluded is to think that nothing can happen on those days.

Thus, when calculating the number of days within the two week notice period for an AGM, the day the notice is given (Day 1 on the chart below), or is deemed to be received (Day 5 on the chart below) cannot be counted as one of the days. The AGM cannot take place on the last day of the notice period (Day 15 or Day 19 on the chart below). It can only take place on any of the days following the last day of the notice period (Day 16 or Day 20 on the chart below).

Chart: Example of How the Notice Period Runs

Type of Notice	When delivery is initiated	When Notice is given	When Notice period starts to run	When the Notice period stops running	When AGM can be held
Deemed Notice: <ul style="list-style-type: none"> • Mailing to address provided by the person; • Leaving it under the strata lot door; • Leaving it with an adult in the strata lot; • Mailing it to the strata lot address; • Putting it in the strata lot’s mail box; • Faxing it to a fax number provided by the person; • Emailing it to an email address provided by the person. 	Day 1	Day 5, Notice is “deemed to be received” after 4 days	Day 6, the 2 week period starts on this day	Day 19, the 2 week period ends on this day	Day 20 or later
Actual Notice: <ul style="list-style-type: none"> • Actually handing it to the person. 	Day 1	Day 1	Day 2	Day 15	Day 16 or later

References:

Sections of the Act: 40, 41, 44-46, 61, 103

Guide 8: How to Conduct an Annual General Meeting (“AGM”)

1. Attending the General Meeting

A strata corporation can create a bylaw which permits people to attend a meeting by electronic or other means, as long as the method of communication permits all persons to communicate with each other.

Under the Standard Bylaws:

- tenants or occupants, regardless whether they are eligible to vote, can attend the AGM;
- persons not eligible to vote can participate in discussions if permitted by the chair; and
- persons who are not eligible to vote may be required to leave the AGM if a resolution is passed by majority vote to exclude them.

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2. Taking Minutes

Throughout the AGM, a person must:

- take minutes; and
- record the results of all votes in the minutes.

3. Determining if There is a Quorum

Business can only be conducted at an AGM if there is a quorum of voters. Determining if there is a quorum of voters at the AGM requires following these steps:

- review the strata corporation's bylaws to determine the number of voters needed to constitute a quorum. Under the Standard Bylaws, quorum is established when:
 - there are eligible voters present at the meeting either in person or by proxy who hold 1/3 the of strata corporation's total votes; or
 - if there are fewer than four strata lots or four owners , there are eligible voters at the meeting in person or by proxy who hold 2/3 of the strata corporation's total votes.
- count the number of eligible voters at the meeting who are present in person or by proxy;
- determine if the number of eligible voters at the AGM are sufficient to form a quorum;

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- unless the bylaws provide otherwise, if no quorum is present at the AGM within a ½ hour from its start, the AGM is automatically adjourned to the same day, time and place in the following week;
- if the meeting is automatically adjourned due to a lack of quorum, and on the second meeting date, there is still no quorum present within one half hour from start of the meeting, then the eligible voters present in person or proxy constitute a quorum.

4. Order of Business

Under the Standard Bylaws, business at the AGM shall be conducted in the following order:

- certify proxies and corporate representatives and issue voting cards;
- determine whether there is a quorum;
- elect a person to chair the meeting, if necessary;
 - meetings must be chaired by the president of the strata council; or
 - if the president is unwilling or unable, then the vice-president of the strata council acts as chair; or
 - if neither president nor vice-president are willing or able to act as chair, then the eligible voters should elect a chair from amongst the persons present at the meeting.
- present to the meeting proof of the Notice of Meeting or the Waiver of Notice;
- approve the agenda;
- approve the minutes of the last annual or special general meeting;
- deal with unfinished business;
- receive reports of council activities and decisions since the previous annual general meeting, including reports of committees;
- ratify any new rules made by the strata corporation;
- report on insurance coverage;
- approve the budget for the coming year;
- deal with new business;
- elect a strata council; and
- terminate the meeting.

5. Rules of Order

Strata corporations who wish to use parliamentary rules of order to govern the conduct of general meetings may want to seek advice on how to incorporate rules of order with the bylaws, in compliance with the *Strata Property Act*.

Rules of order include: *Robert's Rules of Order*, *Bourinot's Rules of Order* and *Merriam-Webster's Rules of Order*.

6. How to Decide Matters on the Agenda

Matters on the agenda are decided by a majority vote, unless the Act or Regulations require otherwise.

The wording of a resolution requiring a $\frac{3}{4}$ vote as circulated with the Notice of Meeting can be amended only if such changes are not substantial and the changes are approved by a $\frac{3}{4}$ vote prior to the resolution being voted on.

7. Reconsideration of a $\frac{3}{4}$ Vote

If a resolution requiring a $\frac{3}{4}$ vote was passed at a general meeting by persons holding less than 50% of the votes in the strata corporation, then the strata council cannot implement the resolution for one week unless such action is needed to ensure safety or prevent significant loss.

Any $\frac{3}{4}$ vote passed by persons holding less than 50% of the votes must be retaken, if--- within one week of the general meeting---persons holding 25% of the strata corporation's votes demand a special general meeting to reconsider the resolution.

For example:

- a strata corporation has persons who hold a total of **120** votes;
- under the Standard Bylaws, in order to have a quorum, the strata corporation would need eligible voters holding a minimum of **40** votes ($\frac{1}{3}$ of 120 total votes) either in person or by proxy. In this example, **51** votes are present, more than the minimum of 40 votes required for a quorum.
- The resolution needs to pass by $\frac{3}{4}$ vote. The $\frac{3}{4}$ vote is determined by those who vote for or against the resolution. It is not determined by the votes present, as abstentions are not counted. At this meeting a total **44** votes were cast; either for or against the resolution; with **33** votes in favour. The resolution passed by the required $\frac{3}{4}$ vote (33 out of 44).

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- However, the **33** votes in favour of the resolution are less than **50%** or **60** of the total number of **120** votes. So the strata corporation must wait one week to implement the resolution because the resolution could be overturned. A vote must be retaken, if---within one week of the general meeting---persons holding at least **30** votes (i.e. 25% of the overall 120 votes in the strata corporation) demand a special general meeting to reconsider the resolution.

Example of Reconsidering a Resolution Passed by a $\frac{3}{4}$ Vote

Total # of votes in the strata Corp.	50% of the strata corp's votes	Quorum: 1/3 of total votes in the strata corporation	# of votes present in person or by proxy	# of votes for or against the resolution	# of votes In favor of the resolution	$\frac{3}{4}$ vote passed?	Did persons voting in favour hold less than 50% of strata corp's votes?
120	60	40	51	44	33	Yes, 33 out of 44 is 75 %	33 < 60 Votes Wait one Week

8. Bylaws and the Second Annual General Meeting

For a bare land strata, or an all-residential strata, no amendment may be made to the bylaws, before the second annual general meeting, without unanimous consent at an annual or special general meeting. At the second AGM and subsequently bylaws may be changed by the usual $\frac{3}{4}$ vote.

References:

Sections of the Act: 35, 48-51, 128, 154

Standard Bylaws: 25, 26, 28

Guide 9: What to Know about Voting

1. Voting Entitlements

All strata lots will have:

- one vote; or
- the number of votes set out in the "Schedule of Voting Rights" (Form W) which has been filed in the Land Title Office.

A Form W cannot be filed for strata developments that are exclusively residential, unless it relates to a plan amendment.

Unless the Form W has been approved by the Superintendent of Real Estate or relates to a plan amendment, it should state that:

- all residential strata lots in mixed use developments have one vote each;
- a non-residential strata lot has a vote that is in proportion to its unit entitlement divided by either the average residential unit entitlement in mixed use developments or the average unit entitlement of all strata lots in exclusively non-residential developments.

If there is a tie vote at annual or special general meeting, the president, or if the president is absent or unable or unwilling to vote, the vice-president may, if the bylaws so provide, break the tie by casting a second deciding vote.

2. Eligible Voters

The following persons are eligible to vote at a general meeting:

- strata lot owners, unless:
 - pursuant to a bylaw, they are ineligible to vote on resolutions requiring a majority or $\frac{3}{4}$ vote due to unpaid strata fees or other monies owing (if the strata corporation is entitled to register a lien against that strata lot pursuant to the Act);
 - they have assigned their right to vote on certain matters to tenants or mortgagees;
 - they no longer have a vote due to an automatic assignment to a residential tenant with a lease of three years or greater or to a family member who is a tenant;
 - they lack the capacity to vote or are under sixteen years of age; or

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*Content that has been updated has been highlighted in **bold italic font** and will remain that way for approximately one year.*

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- there are two or more owners of a strata lot, in which case only one owner representing the strata lot may vote on any given matter. If owners who share a vote cannot agree on how their vote should be cast, the vote in respect of their strata lot will be discounted by the chair of the meeting.
- tenants who have been assigned an owner's (landlord's) right to vote;
- residential tenants who are family members as defined in the Regulations or who have entered into a lease of three years or greater;
- mortgagees who have given the strata council a notice of an intention to vote, however:
 - the notice must be given to the strata corporation, and anyone who has the right to vote;
 - the notice must be given at least three days before the meeting; and
 - the mortgagee is restricted to voting on matters of insurance, maintenance, finance or matters that affect the security of the mortgage.
- a parent or guardian acting for a strata lot owner who is under sixteen years of age;
- a person who is legally authorized to act for the owner who, for a reason other than being under sixteen years of age, lacks the capacity to make a decision;
- the Public Trustee or other person appointed by the court:
 - the court may appoint the Public Trustee or other person to vote in respect of a strata lot when there is no person to vote in respect of the strata lot and an application has been made to the court by an owner, a strata corporation or an interested person; and
 - the court must, when a matter requires a unanimous vote, appoint the Public Trustee or other person to vote in respect of a strata lot.

3. **Ineligible Voters**

A strata lot (owner) may be ineligible to vote for the following reasons:

- pursuant to a bylaw they are ineligible to vote on resolutions requiring a majority or $\frac{3}{4}$ vote due to unpaid strata fees or other monies owing (if the strata corporation is entitled to register a lien against that strata lot pursuant to the Act);
- they are an owner and have assigned their right to vote on certain matters to tenants or mortgagees;
- they are a residential owner and no longer have a vote due to an automatic assignment to a tenant with a lease of three years or greater or to a family member;
- are under sixteen years of age; or
- they lack the capacity to vote.

4. Voting by Proxy

A proxy is a written authorization given to enable the proxy holder to act on behalf of the person giving the proxy. A proxy:

- must be in writing, and be signed by the person appointing the proxy;
- can be given for general purposes or for a specific resolution or for a specific meeting;
- can be revoked by the person appointing the proxy at any time; and
- can be held by any person except the strata corporation's strata manager or an employee of the strata corporation.

A proxy holder may do anything the person appointing the proxy can do, including: voting, proposing and seconding motions and participating in discussion at an annual or special general meeting unless limited in the appointment document.

5. Quorum

Business must not be conducted at an annual or special general meeting unless a quorum is present.

Subject to the bylaws, a quorum for an annual or special general meeting is:

- eligible voters holding 1/3 of the strata corporation's votes present in person or by proxy.
- If there are fewer than 4 strata lots or fewer than 4 owners then eligible voters holding 2/3 of the strata corporation's votes present in person or by proxy.

Unless otherwise provided by the bylaws, if--- within ½ hour from the scheduled start of the annual or general meeting---a quorum is not present, the meeting stands adjourned to the same day in the next week at the same place and time.

However if within ½ hour of the start of this subsequent meeting, a quorum is not present, quorum is deemed to be achieved with the eligible voters present in person or by proxy.

Note: By bylaw, a strata corporation may provide for attendance at an annual or special meeting by telephone or any other method, if the method permits all persons participating in the meeting to communicate with each other during the meeting.

6. Voting at a General Meeting

The Standard Bylaws set out the following provisions which deal with voting at general meetings:

- a voting card must be issued to all eligible voters;
- generally, votes are decided on a show of voting cards;
- an eligible voter can request a precise count, and if a precise count is requested, the chair must decide whether it will be by a show of voting cards, roll call, secret ballot or some other method;
- the outcome of each vote (including the number of votes for and against the resolution if a precise count is requested) must be announced by the chair and recorded in the minutes of the meeting;
- if an eligible voter requests a secret ballot the vote must be taken that way; and
- a tie vote can be broken by the president of the strata council, or vice president if the president is unwilling or unable to act.

7. Levels of Strata Corporation Voting Approval

Strata corporation resolutions at general meetings must be approved by:

- **a majority vote:**
 - a majority vote requires more than ½ of the votes cast in favour of the resolution; cast by eligible voters present in person, or by proxy, at a general meeting who have not abstained from voting, at the time the vote was taken;
 - all resolutions should be determined by a majority vote, unless the Act or Regulations require an alternative level of voting approval.

Example of Calculating a Majority Vote

Total # of eligible votes in the strata corporation	Quorum (1/3 of total eligible votes)	# of eligible votes present in person or by proxy	Total # of votes cast (either for or against; abstentions are not counted)	Minimum # of votes in favour, for a majority vote to pass
90	30	34	34	18
90	30	34	25	13

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- **a $\frac{3}{4}$ vote:**
 - a $\frac{3}{4}$ vote requires that at least $\frac{3}{4}$ of the votes are cast in favour by eligible voters present in person or by proxy at a general meeting who have not abstained from voting, at the time the vote was taken.
 - If a resolution requiring a $\frac{3}{4}$ vote was passed at a general meeting by persons holding less than 50% of the votes in the strata corporation, then the strata council cannot implement the resolution for one week unless such action is needed to ensure safety or prevent significant loss (please see part 8 of this guide for more information).

Example of Calculating a $\frac{3}{4}$ Vote

Total # of votes in the strata corp.	50% of the strata corp's votes	Quorum: 1/3 as per the Strata Property Act	# of votes present in person or by proxy	Total # of votes cast (either for or against; abstentions are not counted)	# of votes in favour of the resolution	$\frac{3}{4}$ vote passed?	Did persons voting in favour hold less than 50% of strata corp's votes?
24	12	8	16	15	13	<p>Yes</p> <p>13 out of 15 is 87% which is greater than 75% ($\frac{3}{4}$ vote)</p>	<p>No</p> <p>13 is not less than 50% of the total votes (i.e. 12 votes) see part 8 below for more information on $\frac{3}{4}$ votes</p>

- **unanimous vote:**
 - a unanimous vote means a vote in favour of a resolution by all the votes of all the eligible voters¹.
- **some other vote:**
 - exclusively non-residential strata sections can pass a bylaw which allows new bylaws to be approved by a voting threshold of other than a $\frac{3}{4}$ vote.

¹ References include *Strata Property Act Section 1.1 for the definition of an unanimous vote and section 52 for when a strata corporation can apply to the Supreme Court to pass a failed unanimous resolution. Also section 11 of this guide provides more details.*

8. Reconsideration of a $\frac{3}{4}$ Vote

If a resolution requiring a $\frac{3}{4}$ vote was passed at a general meeting by persons holding less than 50% of the votes in the strata corporation, then the strata council cannot implement the resolution for one week unless such action is needed to ensure safety or prevent significant loss.

Any $\frac{3}{4}$ vote passed by persons holding less than 50% of the votes must be retaken, if--- within one week of the general meeting---persons holding 25% of the strata corporation's votes demand a special general meeting to reconsider the resolution.

For example:

- A strata corporation has persons who hold a total of **120** votes.
- Under the Standard Bylaws, in order to have a quorum, the strata corporation would need eligible voters holding a minimum of **40** votes ($\frac{1}{3}$ of 120 total votes) either in person or by proxy. In the example below, **51** votes are present, more than the minimum of 40 votes required for a quorum.
- The resolution needs to pass by $\frac{3}{4}$ vote. The $\frac{3}{4}$ vote is determined by those who vote for or against the resolution. It is not determined by the votes present at the time of the vote, as abstentions are not counted. At this meeting a total **44** votes were cast, either for or against the resolution, with **33** votes in favour. The resolution passed by the required $\frac{3}{4}$ vote (33 out of 44).
- However, the **33** votes in favour of the resolution are less than **50%** or **60** of the total number of **120** votes. So the strata corporation must wait one week to implement the resolution---unless such action is needed to ensure safety or prevent significant loss---because the resolution could be overturned. A vote must be retaken, if--- within one week of the general meeting---persons holding at least **30** votes (i.e. 25% of the overall 120 votes in the strata corporation) demand a special general meeting to reconsider the resolution.

Example of Reconsidering a Resolution Passed by a $\frac{3}{4}$ Vote

Total # of votes in the strata Corp.	50% of the strata corp's votes	Quorum: $\frac{1}{3}$ as per the Strata Property Act	# of votes present in person or by proxy	Total # of votes cast (either for or against; abstentions are not counted)	Total # of votes in favor of the resolution	$\frac{3}{4}$ vote passed?	Did persons voting in favour hold less than 50% of strata corp's votes?
120	60	40	51	44	33	Yes. 33 out of 44 is the minimum 75 %	33 < 60 votes wait one week

9. Strata Corporation Decisions that Require a $\frac{3}{4}$ Vote

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A $\frac{3}{4}$ vote is required to:

- create, amend or remove bylaws for residential lots and non-residential lots on or after the Second Annual General Meeting (unless an alternative voting threshold for the non-residential lots is set out in the bylaws);
- approve special levies when the method of payment of the levy is based on unit entitlement;
- ***waive the requirement to obtain a depreciation report (For more information on the new depreciation report requirements please see the updated Guide 12: Depreciation Reports, Contingency Reserve Funds and Special Levies).***
- designate limited common property or remove a limited common property designation by means of a sketch plan (if the LCP has not been designated by the owner-developer, otherwise a unanimous vote is required).
- cancel a strata management contract, other than in accordance with its terms or by failing to renew it after the second annual general meeting;
- approve significant changes to the common property, unless there are reasonable grounds to believe that immediate change is required to ensure safety or prevent significant loss or damage, in which case no vote is needed;
- approve the borrowing of money;
- acquire or dispose of personal property (except permitted investment instruments), if the market value of the personal property is:
 - over the amount specified in the bylaws; or
 - if there is no amount specified in bylaws, over \$1,000.
- acquire or sell land held by the strata corporation that is not common property;
- make land held by the strata corporation into common property;
- divide a residential strata lot into two or more strata lots if the division does not have the effect of:
 - decreasing the relative voting power of the other strata lots;
 - increasing the share of common expenses borne by the other strata lots; or
 - decreasing the relative unit entitlement of the other strata lots.
- amalgamate a strata corporation with another strata corporation;
- make land held by the strata corporation into a new strata lot, if the unit entitlement, voting power and strata fees for all other lots is unaffected by the change;
- approve expenditures from the Contingency Reserve Fund, unless the expenditure is required for an emergency, in which case no vote is needed;
- approve expenditures from the operating fund that are not:
 - authorized in the budget;
 - within the unapproved expenditure limit; or

- required to deal with an emergency.
- change the fiscal year end and start date;
- approve decisions related to surplus funds when surplus funds are not being dealt with under the options set out in the Act;
- decide not to replace or repair damaged property after receiving insurance proceeds paid on a claim in respect of the damaged property;
- create or cancel separate sections, along with a $\frac{3}{4}$ vote of the section; and
- give approval to the strata corporation to sue.

10. **Strata Corporation Decisions that Require a Unanimous Vote**

A unanimous vote is required to:

- give approval to the Owner Developer to enter into a contract or transaction on behalf of strata corporation with the Owner Developer or with a person who is not at arm's length to the Owner Developer, after the first strata lot is sold but before the first annual general meeting;
- approve any resolutions ordinarily requiring a $\frac{3}{4}$ vote, during the period from the sale of the first strata lot to the first annual general meeting, unless:
 - the resolution is to amend the bylaws in a wholly commercial strata corporation or to amend the commercial section bylaws in a strata corporation consisting of residential and commercial sections;
 - the resolution is to amend a Rental Disclosure Statement.
- approve changes to the schedule of unit entitlement;
- approve a method other than by unit entitlement, in which a special levy will be assessed to the owners;
- approve changes to the strata corporation bylaws in a residential or mixed use development before the second annual general meeting;
- amend a strata plan to designate or remove a designation of limited common property (as made by the owner-developer);
- amend the strata plan to:
 - divide a strata lot into two or more strata lots;
 - consolidate a strata lot with one or more other strata lots;
 - make land held by the strata corporation into a new strata lot;
 - add land held by the strata corporation to an existing strata lot;
 - change the unit entitlement of a strata lot;
 - add part of a strata lot to another strata lot;if the amendment would have the effect of:
 - decreasing the relative voting power of the other strata lots;
 - increasing the share of common expenses borne by the other strata lots; or

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- decreasing the relative unit entitlement of the other strata lots.
- amend the strata plan to add a strata lot to the common property;
- cancel the strata plan and wind up the strata corporation; and
- change the basis for calculating a strata lot's contribution to the operating fund and contingency reserve fund.

11. Court Approval of Failed Unanimous Votes

If there are ten or more strata lots, and a unanimous resolution is not passed due to:

- a dissenting vote in respect of one strata lot; or
- the dissenting votes in respect of more than one strata lot, if those votes represent less than 5% of the total strata corporation votes;

The strata corporation can seek a $\frac{3}{4}$ vote to apply to court for an order that the resolution be passed despite the lack of unanimous support.

The court may order that the resolution be passed despite the lack of unanimity if the resolution:

- would be in the best interests of the strata corporation; and
- would not unfairly prejudice the dissenting voters.

Example of Calculating the Votes Needed to Request Judicial Passage of a Nearly Unanimous Vote

Total # of Votes in the strata corp.	# of votes necessary to pass a unanimous resolution	Maximum # of votes (using whole #) which taken together represent < 5% of the strata corp.'s votes	# of votes in Favor of the Resolution	Unanimous vote passed?	Can the strata corp. choose to go to court?
100	100	4	96	No	Yes. 100 – 96 = 4 the vote failed by 4 votes; 4 votes is less than 5% of the strata corp.'s total votes

12. Voting at a Strata Council Meeting

The Standard Bylaws set out the following provisions which deal with voting at strata council meetings:

- each council member has one vote;
- all matters are decided by a majority vote;
- at council meetings, decisions are made by council members present in person at

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- the meeting (i.e. no proxies);
- a record of each vote must be recorded in the minutes; and
- a tie vote can be broken by the president unless the strata corporation consists of only two strata lots.

The Act sets out the following provision which deals with voting at strata council meetings:

- a council member cannot vote on a matter if the council member has a direct or indirect interest in the outcome of the vote.

Under the Standard Bylaws a quorum of the council is:

- one member (if the council consists of one member);
- two members (if the council consists of two, three or four members);
- three members (if the council consists of five or six members);
- four members (if the council consists of seven members).

Council members must be present in person at the council meeting to be counted in establishing quorum.

Council has the option of holding council meetings by electronic means as long as all council members and participants can communicate with each other.

References:

Sections of the Act: 1, 10, 11, 32, 39, 48, 50-58, 70, 71, 73-75, 78-80, 82, 96-98, 100, 102, 105, 108, 111, 112, 116, 142, 127, 128, 147, 148, 159, 171, 193, 197, 247, 248, 257, 260-263, 266, 272, 277

Sections of the Regulations: 6.1

Standard Bylaws: 16, 17, 18, 27

Strata Corporation Finances and Budgeting

February 2013

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Overview

Strata owners pay for common expenses through strata fees and, if necessary, special levies. Strata fees and the budget are approved each year by majority vote at the strata corporation's annual general meeting (AGM). Special levies are approved by a minimum $\frac{3}{4}$ vote.

Key financial duties of strata owners include:

- paying for common expenses through strata fees and, if necessary, special levies;
- approving strata finances, by voting on the annual budget and other expenditures; and
- ensuring financial controls are in place. Although a strata corporation is run by the elected strata council, and may be assisted by a strata property manager, the responsibility for the strata corporation ultimately remains with the strata owners.

Inside

- Overview
- Best Practices
- Common Expenses
- Strata Fees
- The Annual Budget
- The Contingency Reserve Fund
- Special Levies

Common Expenses in Strata Corporations

There are two types of common expenses:

Operating Fund expenses are the day-to-day expenses for common property that occur once a year or more often than once a year and are paid from the operating fund. These can include such things as: utilities, landscaping, cleaning, minor maintenance, strata property management, etc.

Contingency Reserve Fund (CRF) expenses are for common property expenses that occur less often than once a year and are paid from the contingency reserve fund. These include things such as replacing the roof or upgrading the elevator.

Contingency reserve fund expenses are usually known in advance, identified by a depreciation report and must be approved by a $\frac{3}{4}$ vote of the owners. However, the CRF can also be used to pay for emergency repairs and insurance deductibles that are a common expense.

Paying for common expenses

Strata lot owners pay strata fees and special levies to pay for common expenses. Contributions to common expenses can also include income from sources such as: interest on investments, fines, parking, monies generated from the laundry room or the rental of common areas such as a guest room.

Common expenses may not apply to all strata lots

It is important to note that in some strata corporations, contributions for common expenses may only apply to some strata lots. Separate sections within a strata corporation are separate legal entities.

- Strata corporations with separate sections must have both separate section budgets and section CRFs for those section expenses **which relate exclusively to that section**. Contributions for the section budget are usually based on the unit entitlement of each strata lot in the section.
- Contributions to the separate section operating fund and the CRF are approved in the separate section annual budget and collected through separate section strata fees.

Strata lots in a section will also contribute to a strata corporation budget and strata corporation CRF for expenses common to strata lots in all sections, or expenses which are shared by more than section.

Note, strata lots that are differentiated as different **types** of strata lots in a bylaw do not have the power to establish their own operating fund and CRF. However, if a common expense relates exclusively to:

- a **type** of strata lot identified as a type in a bylaw;
 - strata lots with limited common property; or
 - strata lot repair and maintenance for which the strata corporation has, by bylaw, taken responsibility;
- then contributions for those expenses should be assessed only to the strata lot(s) to which the expense relates.

Expenditures from the Operating Fund

The strata council is authorized to make expenditures from the operating fund (if the expenditure occurs either once a year or more often than once a year).

Operating fund expenditures can be made:

- if approved:
 - in the annual budget; or
 - by a resolution passed by a $\frac{3}{4}$ vote at a general meeting;
- if unapproved, the expenditure, plus all previous unapproved expenditures made in the same fiscal year, may not exceed:
 - the limit for unapproved expenditures set out in a bylaw; OR
 - if no bylaw exists, the lesser of \$2,000 or 5% of the total contributions to the operating fund for the current fiscal year; OR
 - the expenditure is the minimum amount that the strata council needs to expend in order to ensure safety and prevent significant loss or damage. The strata council must inform owners as soon as possible about this expenditure.

Some Financial Best Practices for Strata Corporations

Keep It Simple

- Present financial information simply and clearly so that strata lot owners, and other readers, can easily understand financial statements and reports.
- Have all strata funds in bank/credit union accounts in the legal name of the strata corporation. Consider having separate bank/credit union accounts for separate funds: operating, contingency reserve and special levies.

Consider Future Costs:

- Has a depreciation report been done? How much money is in the contingency reserve fund in relation to expected expenses?

Some Checks and Balances to Help Prevent Fraud

- Financial records should be easily available to owners (subject to privacy legislation). Additional owner scrutiny is a good thing.
- All expenditure and contract decisions should be recorded in the minutes.
- Petty cash should be for a minimal amount (\$50 or less) and must have receipts for payments.
- Review, and include in the financial statements, all revenue sources such as: parking, storage, laundry machines, fines and the interest on invested funds.
- Have at least two people formally responsible to review and approve expenses and sign cheques. Are invoices being paid for work actually done or goods received for *your* strata corporation?
- Every month the strata council needs to review bank statements; monitor whether strata lot owners are paying their monthly strata fees and any special levies; and review the treasurer's report for accuracy and to ensure expenditures have prior approval.
- How long have people been in positions, e.g., treasurer, strata property manager? How is their work being checked?
- How are contractors selected? If recommendations are received for a contractor, are the recommendations impartial? Is more than one contractor being considered?
- Consider having an audit or an independent financial review (such as a review engagement) for the strata corporation. Audits conducted by the Real Estate Council of BC (RECBC) on real estate brokerages who employ strata property managers are only for some of a brokerage's trust accounts. These RECBC audits are *not* a detailed audit of an individual strata corporation's accounts. Also it should be noted that the *Real Estate Services Act* insures to a maximum of: \$100,000 per strata corporation; and to a maximum of \$500,000 for all the strata corporations that a brokerage is managing.

Due diligence is required from owners to ensure a financially well-run strata corporation. Strata lot owners should keep themselves informed about their strata corporation by checking that financial controls are in place, attending meetings, voting, and reviewing records.

Strata Fees

Each strata lot owner pays strata fees to cover budgeted common expenses. Strata fees are usually paid monthly and include contributions to the operating fund and the contingency reserve fund. Strata fees are set when the budget is approved by majority vote at the Annual General Meeting (AGM). Within two weeks of the budget passing, the strata corporation must inform owners of the new strata fees.

Calculating Strata Fees

Strata fees are normally calculated by dividing the expenditures in the approved budget among the strata lots on the basis of unit entitlement. In apartment style or townhouse strata developments, unit entitlement is often based on the habitable size of the strata lot. In bareland stratas, unit entitlement is usually equal for each strata lot.

The schedule of unit entitlement is contained in the strata plan for the strata corporation and must be registered at the Land Title and Survey Authority (LTSA) or filed separately on a Form “V” at the LTSA. (The Form “V” is often used for more recent strata corporations).

Strata fees may also be calculated by using a formula other than unit entitlement, **by passing a unanimous vote** on a resolution approving the new formula, and registering the resolution, and the approved formula, in the Land Title and Survey Authority.

Late or Unpaid Strata Fees

Most strata corporations have a bylaw setting out when strata fees are to be paid. If strata corporations don't have their own bylaw for the payment of strata fees, then Standard Bylaw 1 requires strata fees to be paid on or before the first day of each month.

A strata council can fine a strata lot owner for failing to pay strata fees in accordance with the bylaw. (Standard Bylaws 23 and 24 apply to any strata corporation that does not have its own bylaw.)

Additionally, a strata corporation may charge interest for late or unpaid strata fees if they pass a bylaw setting out the rate of interest that can be charged for late payments. The interest:

- cannot exceed 10% per annum compounded annually;
- is not a fine; and
- forms part of the strata fees.

The strata corporation may also file a lien for unpaid strata fees against a strata lot. The lien may be registered at the Land Title and Survey Authority (LTSA) against the title of a strata lot by filing a [Form G \(A Certificate of Lien\)](#). Note: a lien may not be filed for unpaid fines.

A bylaw can be created to prohibit a strata lot owner or tenant, if they have unpaid strata fees, from sitting on the strata council or from voting on resolutions requiring a majority or $\frac{3}{4}$ vote at general meetings.

Borrowing Against Future Strata Fee Revenue

With a resolution approved by a $\frac{3}{4}$ vote, a strata corporation can borrow money and assign future strata fee revenue as security for the principal and interest. A strata council should seek legal advice on the writing of the $\frac{3}{4}$ resolution, and the loan negotiations.

The Annual Budget

At each Annual General Meeting (AGM) the owners approve the budget by majority vote.

Checklist for the Annual Budget

At least two weeks before the AGM the strata council must prepare and distribute:

- the notice of the annual general meeting
- the annual budget for the upcoming year
- a financial statement for the fiscal year just ending.

Within 2 weeks of the annual or special general meeting at which the budget is passed, the strata corporation must inform owners of the new strata fees.

Preparing the Annual Budget

The budget must contain:

- The **opening balance** in both the operating and contingency reserve funds. This is the surplus or deficit from the year just ending (or estimated surplus or deficit);
- **Estimated income** from all sources other than strata fees, itemized by source. (For example: interest, fines, parking, leasing space for cell-phone towers, etc.);
- A list of the **estimated expenditures** from the operating fund, itemized by category of expenditure. (For example: electricity, landscaping, janitorial, strata property management, professional services, etc.);
- Where applicable, a list of estimated expenditures from the operating fund that relate exclusively to:
 - a type of strata lot identified as a type in a bylaw;
 - limited common property; and
 - strata lot repair and maintenance that the corporation has responsibility for, by bylaw.
- The total of all estimated expenditures from the operating fund;
- The total of all contributions to the operating fund;
- The total of all contributions to the contingency reserve fund (CRF) with consideration to the depreciation report, if any;
- Each strata lot's monthly contribution to the operating fund and the monthly contribution to contingency reserve fund (i.e., the strata fee);
- The estimated balance in the operating fund and the contingency reserve fund at the end of the year.

Section Budgets

Strata corporations with sections must have:

- a strata corporation budget for expenses relating to the whole strata corporation, which meets the requirements set out above; and
- a budget for each section for expenses relating exclusively to the section, which meets the requirements set out above.

The strata corporation budget is voted on at the strata corporation AGM and the section budget is voted on at the section AGM.

Budget Surplus or Deficit

A **budget surplus** occurs when contributions to the operating fund for the previous fiscal year exceed the actual expenditures. A budget surplus can be dealt with in one or more of the following ways:

- transferred to the contingency reserve fund;
- carried forward as part of the operating fund as a surplus, which will not reduce the strata fees;
- used to reduce the total contributions required to the next year's operating fund, which in effect reduces strata fees; or
- any other way determined by a resolution approved by a $\frac{3}{4}$ vote at an annual or special general meeting.

A **budget deficit** occurs when the actual expenditures exceed the contributions to the operating fund for the previous fiscal year.

- A budget deficit must be eliminated during the next fiscal year. This can be done by: raising strata fees, increasing revenues, reducing expenses and/or approving a special levy.

Approving the Budget

The budget for the next fiscal year is approved by a majority vote of the owners at the AGM. The proposed budget may be amended by a majority vote, during the meeting, before the final vote is held to approve the budget.

Failure to Approve the Budget at the AGM

If a budget is *not* approved at the AGM:

- the current budget continues. Owners continue to pay the same monthly strata fees required under the previous budget until the new budget is approved;
- the strata corporation must prepare a new proposed budget that must be approved by a majority vote at a special general meeting to be held within thirty (30) days of the AGM. The special general meeting can be held later than thirty (30) days if the later period is approved by a $\frac{3}{4}$ vote at the AGM.

Until a new budget is approved, the strata corporation may only spend money out of the operating fund if the expenditure:

- 1) meets the requirements necessary for an unapproved expenditure (see Expenditures later in this guide); or
- 2) a) is the type of expense that is set out in the previous budget and usually occurs once a year or more often than once a year; and
b) does not exceed the maximum amount in the previous budget for that particular category of expense.

Confirming Strata Fees

Within two weeks following the annual or special general meeting at which a budget is passed, the strata corporation must inform owners of the new strata fees. Strata fees may not necessarily change from one year to the next. However they are implicitly approved as part of the annual budgeting process.

Changing the Fiscal Year End and Start Date

The strata corporation may (by a resolution passed by a $\frac{3}{4}$ vote at an annual or special general meeting) change the date of its fiscal year by up to six months. As a result, a budget may cover a period of:

- longer than twelve months, but it must not exceed eighteen months; or
- less than twelve months, but it must be at least six months.

If a change is made to the fiscal year that results in a period not covered by a budget:

- the owners must continue to pay the same monthly strata fees required to be paid under the previous budget until the new budget is approved.
- until a new budget is approved, the strata corporation may only spend money out of the operating fund if the expenditure:
 - 1) meets the requirements necessary to make an unapproved expenditure; **or**
 - 2) a) is the type of expense that is set out in the previous budget and usually occurs once a year or more often than once a year; **and**
 - b) does not exceed the maximum amount in the previous budget for that particular category of expense.

The strata corporation should seek approval from the Canada Revenue Agency prior to changing its fiscal year.

Preparing a Financial Statement

The strata council must prepare a financial statement for the fiscal year that is just ending, and distribute it with the notice of the AGM. The purpose of the financial statement is to report on the strata corporation's actual income and expenses for the year that is just ending.

The financial statement must cover a period not less than up to two months before the AGM. Within eight weeks after the strata corporation's fiscal year end, the strata council must prepare a financial statement updated to the end of the fiscal year.

The financial statement must contain:

- the opening and current balance in the operating fund;
- the opening and current balance in the contingency reserve fund;
- the details of the strata corporation's income from all sources, except special levies. For example, income from interest, fines and even guest room revenue;
- the details of operating fund expenditures, including any unapproved expenditures;
- details of contingency reserve fund expenditures, including any unapproved expenditures; and
- income and expenditures by special levy, if any.

Filing Tax Returns

The strata corporation must file a tax return for each fiscal year with the Canada Revenue Agency, and must provide a copy of their annual financial statements with their tax returns. Most residential strata corporations are essentially non taxable corporations. For more information please check with the Canada Revenue Agency.

Contingency Reserve Fund

Strata corporations must have a contingency reserve fund (“CRF”) to pay for common expenses that:

- usually occur less often than once a year; or
- do not usually occur.

Contributions to the CRF

Contributions from strata owners to the CRF should be reviewed at every AGM with consideration to the depreciation report. CRF contributions usually appear as a single expense line item in the annual budget, without specific detail.

Contributions to the CRF are approved in the annual budget and collected through strata fees. Usually, CRF contributions are calculated based on the unit entitlement of each strata lot in the strata corporation.

The following may also be added to the CRF:

- surplus funds from the previous year’s operating fund; and
- surplus funds from a special levy, as long as the surplus funds owing to each strata lot is \$100 or less;
- sale of assets.

The CRF must have a minimum balance of 25% of the operating fund for the fiscal year. If the amount in the CRF is less, the strata corporation must contribute at least 10% of the total contribution to the operating fund for the current year until the 25% minimum is reached.

Strata owners may now make contributions to the CRF (above the minimum) by simple majority vote as part of the budget approval process and with consideration to the depreciation report. (Previously a $\frac{3}{4}$ vote was required to make contributions to the CRF if the balance in the CRF was above 100% of the operating budget).

Most strata corporations will have significantly more in the CRF than the minimum required, in order to have funds on hand to pay for the repair, replacement and maintenance of common property over the longer term.

Investing and Managing the CRF

The CRF can be invested or held:

- in insured accounts with savings institutions in British Columbia; or
- in those investments permitted by Strata Property Regulation 6.11.

The funds must be accounted for separately from other monies held by the strata corporation or separate section and:

- must include any interest or income earned on the CRF; and
- can be used to secure a strata corporation loan by approval of a $\frac{3}{4}$ vote.

The depreciation report provides important planning information to strata lot owners about future costs to maintain, repair and renew the strata corporation’s buildings, assets and infrastructure over a 30 year time period.

Please see “Guide 12: Depreciation Reports” for more details.

Expenditures from the CRF

Expenditures from the CRF must be:

- approved by a $\frac{3}{4}$ vote at an annual or special general meeting; and
- consistent with the purpose of the CRF.

An unapproved expenditure from the CRF will only be permitted:

- 1) if the expenditure is necessary to ensure safety or prevent significant loss or damage; and
- 2) a) if the expenditure does not exceed what is required to ensure safety or prevent loss or damage; or
b) if the expenditure is for the purpose of paying an insurance deductible required to repair or replace damaged property.

If an unapproved expenditure occurs a strata council must inform owners as soon as possible about the expenditure unless the expenditure was to pay for an insurance deductible.

Funds from the CRF can be lent to the operating fund to cover temporary shortages as a result of expenses becoming payable before contributions to the operating fund have been collected. If a temporary loan is made:

- it must be repaid to the CRF by the end of that fiscal year; and
- the strata council must inform owners as soon as feasible of the amount and purpose of the loan.

Sections and CRFs

Separate sections within a strata corporation are separate legal entities.

- Strata corporations with separate sections must have both separate section budgets and section CRFs for those section expenses **that relate exclusively to that section**. Contributions for the section budget are usually based on the unit entitlement of each strata lot in the section.
- Contributions to the separate section operating fund and the CRF are approved in the separate section annual budget and collected through separate section strata fees.
- Strata lot owners in a section will also contribute to a strata corporation budget and strata corporation CRF for expenses common to strata lots in all sections, or expenses that are shared by more than section.

Note: strata lots that are differentiated as different **types** of strata lots in a bylaw do not have the power to establish their own operating fund and CRF.

Claims to Monies in the CRF

When the sale of a strata lot occurs, the seller is not entitled to a return of contributions to the CRF.

Special Levy

Overview

A special levy is money collected from strata lot owners for common expenses and a specific purpose. It is in addition to the strata fee and it must be approved at a general meeting.

Special levies occur when:

- the expenditure has not been included in the annual budget because it was either not anticipated or because of the infrequency of the expense;
- there are insufficient funds in the CRF; or
- a decision is made not to use monies from the CRF.

Approving and Contributing to a Special Levy

A resolution for a special levy must be developed and submitted for approval at a general meeting. The resolution must:

- set out the purpose of the levy;
- state the total amount of the levy;
- state the method for determining each strata lot's share of the levy;
- state the amount each strata lot must pay; and
- state the date(s) by which the levy must be paid (i.e. paid as one lump sum or by scheduled installments).

The vote necessary to approve a special levy will be either:

- a **$\frac{3}{4}$ vote** if contributions to the levy are apportioned in the same way strata fees are apportioned, (which is usually by unit entitlement);
- an **unanimous vote**, if contributions to the levy will be apportioned by a fair division of expense rather than the way that strata fees are apportioned.

When a strata lot is sold, if the special levy is approved before the strata lot is conveyed to the purchaser:

- the seller will owe the strata corporation the portion of the levy that is payable *before* the date the strata lot is conveyed to the purchaser; and
- the purchaser will owe the strata corporation the portion of the levy that is payable *on or after* the date the strata lot is conveyed.

Expenditures and Uses of a Special Levy

- The strata corporation must use the money collected by means of a special levy only for the purpose set out in the resolution. The strata council must also inform owners of how monies raised from a special levy have been spent.
- The special levy can be used to secure a strata corporation loan by approval of a $\frac{3}{4}$ vote.

Excess Special Levy Funds

The strata corporation must return excess funds from a special levy to each owner of the strata lot proportional to the contribution made to the special levy in respect of that strata lot, if there is at least one owner entitled to more than \$100. If no owner is entitled to more than \$100, the strata corporation may deposit the excess funds in the CRF.

If a strata lot has been sold since the special levy was paid, any refund of the special levy is given to the current owner of the strata lot (i.e., the strata lot owner at the time of the refund).

Charging Interest on Late Payment of a Special Levy

A strata corporation may, by bylaw or by a resolution approving a special levy, establish a rate of interest not to exceed the rate set out in the regulations, to be paid if the owner is late in paying his or her strata lot's share of the special levy. The interest payable is not a fine and forms part of the special levy.

Investing and Managing the Special Levy

Similar to the CRF, the special levy can be invested or held:

- in insured accounts with savings institutions in British Columbia
- in those investments permitted by Strata Property Regulation 6.11

The special levy must be accounted for separately from other monies held by the strata corporation (or section) and include any interest or income earned on the special levy.

Additional Resources

Other Relevant Strata Property Guides:

- Guide 7: How to Prepare for an Annual General Meeting
- Guide 12: Depreciation Reports
- Guide 19: Unit Entitlement
- Guide 28: Sections

Links to additional resources:

- Guides: www.housing.gov.bc.ca/strata/guides.htm
- Strata Property Act: www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/98043_00
- Strata Property Regulation: www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/12_43_2000

Strata Organizations in British Columbia:

- Condominium Home Owners' Association (CHOA): www.choa.bc.ca
- Vancouver Island Strata Owners Association: visoa.bc.ca
- Canadian Condominium Institute, Vancouver Chapter: www.ccivancouver.ca

References:

Sections of the Act referenced in this Guide: 14, 28, 45, 53, 81, 92, 97-100, 102-108, 111, 116

Sections of the Regulations referenced in this Guide: 3.4, 6.1-6.8, 6.11, 17.9

Standard Bylaws referenced in this Guide: 1, 23, 24

Guide 11: How to Apportion Expenses

1. The Responsibility to **UNDERTAKE** Repair and Maintenance versus the Responsibility to **PAY** for Repairs and Maintenance

Under the Act, Regulations and bylaws, there is a distinction made between:

- **who undertakes** the actual repair and maintenance of various parts of the strata development; and
- **who pays** for the maintenance and repair costs.

This distinction may result in:

- the strata corporation maintaining and repairing areas that are part of the strata lot or designated as limited common property, but
- the cost of the maintenance and repair being assigned, in the operating budget, to those strata lots which have been maintained and repaired or have been allocated the limited common property.

The Act and the bylaws of the strata corporation (if the strata corporation has bylaws relating to repair and maintenance) determine whether the strata corporation or the individual strata lot owners have the responsibility to undertake the actual repair and maintenance of various parts of the strata development.

If the strata corporation is responsible to undertake the maintenance and repair, the Act and Regulations determine how the costs for the maintenance and repair will be assigned to strata lot owners; how these costs are assigned cannot be changed with a bylaw amendment.

If an owner is responsible to undertake maintenance and repair of his or her strata lot or limited common property, he or she is solely responsible for those costs, and they cannot be assigned to other strata lot owners. ***As of December 14, 2011 depreciation reports for strata corporations must identify common property and limited common property that the strata lot owner, and not the strata corporation, is responsible to repair and maintain.***¹

Disclaimer: the guides are periodically reviewed and updated by the Office of Housing and Construction Standards as per the date in the footer below.

*Content that has been updated has been highlighted in **bold italic font** and will remain that way for approximately one year.*

The guides are provided for the reader's convenience; they are not a substitute for professional advice including legal advice. Please note: the Standard Bylaws can be amended.

¹ Strata Property Regulation 6.2 (2) c

2. Who is Responsible to Pay for the Cost of Repair and Maintenance

Whether **some strata owners or all strata owners are responsible to pay** for the cost of repair and maintenance will depend **on both**:

- **how often the cost occurs** for the strata corporation **and**
- **how the expenses are paid**: from the operating fund, from the contingency reserve fund or by special levy

Costs either occur regularly (once a year or more often) or infrequently (less than once a year):

- **Regular costs** will usually be **paid from the operating fund** as an operating expense; although the strata corporation may also pay some regular expenses with funds raised by a special levy.
- **Infrequent expenses** will be **paid from the contingency reserve fund** or by raising funds **through a special levy**.

3. Costs paid from the strata corporation's operating fund

Costs occurring regularly (once a year or more often) will usually be paid from the strata corporation's operating fund as an operating expense.

These costs must be allocated and assigned to strata lots in the operating budget as follows:

- costs that relate to the use of **limited common property** are assigned by unit entitlement (or some other method approved by unanimous resolution) **to those strata lots²** which are entitled to use the limited common property;
- costs that relate to a **type** of strata lot identified in the bylaws as a type, are assigned by unit entitlement (or some other method approved by unanimous resolution) **to those strata lots of that type**;
- costs that relate to the **maintenance of specified portions of some strata lots** where the strata corporation has taken responsibility, by bylaw, to maintain those portions of the strata lot, are assigned by unit entitlement (or some other method approved by unanimous resolution) **to those strata lots** to which the maintenance relates; and
- **other regular maintenance costs are shared by all strata lots** by unit entitlement (or some other method approved by unanimous resolution).

² See Strata Property Regulation 6.5

4. Costs paid from special levies

Repairs and maintenance that occur either regularly or infrequently may be paid for by a special levy.

- **If those costs relates to parts of the strata lot** where the strata corporation has taken responsibility, **by bylaw**, to maintain a specified portion of the strata lot; then those costs are apportioned by unit entitlement (or some other method approved by unanimous resolution), **to those strata lots** to which the repair relates.
- All other costs (excluding the ones referenced above) paid for by the special levy are apportioned to all strata lots by unit entitlement (or some other method approved by unanimous resolution).

5. Costs paid from the strata corporation's Contingency Reserve Fund (CRF)

Infrequent repairs and maintenance (less than once a year) may be paid from the Contingency Reserve Fund (CRF). Contributions to the CRF must be assigned **to all strata lots** by unit entitlement (or an alternative method for apportioning costs approved by unanimous resolution).

Please refer to the following chart on page 4 at the end of this chapter, "How to Apportion Strata Corporation Expenses by Source of Funds", for a summary of how expenses paid from different sources of funds must be allocated to owners.

How to Apportion Strata Corporation Expenses by Source of Funds

Expenses which occur once a year or more frequently than once a year – paid from the operating fund	Costs that relate to the use of limited common property are apportioned by unit entitlement or some other method approved by unanimous resolution to those strata lots which are entitled to use the limited common property.
	Costs that relate to a type of strata lot are apportioned by unit entitlement or some other method approved by unanimous resolution to those strata lots of that type
	Costs that relate to the maintenance and repair of a strata lot, where the strata corporation has taken responsibility by bylaw for that maintenance and repair, are apportioned by unit entitlement or some other method approved by unanimous resolution amongst the strata lots to which the contribution relates.
	The balance of all expenses (not apportioned by any of the above) are apportioned to all strata lots by unit entitlement or some other method approved by unanimous resolution.
Expenses which occur less often than once per year – paid from the contingency reserve fund	Costs are apportioned to all strata lots by unit entitlement or some other method approved by unanimous resolution.
Expenses which occur with any frequency – paid from funds raised by special levy	Costs, paid by special levies for maintenance and repair of a strata lot, where the strata corporation has taken responsibility by bylaw for that maintenance and repair, are apportioned by unit entitlement or some other method approved by unanimous resolution amongst the strata lots to which the contribution relates.
	All other costs (excluding the one directly above) paid for by the special levy are apportioned to all strata lots by unit entitlement or some other method approved by unanimous resolution.

Depreciation Reports

March 2013

Disclaimer: the guides are periodically updated as noted on the front page.

The guides are provided for the reader's convenience; they are not a substitute for professional advice including legal advice. Please note: the Standard Bylaws can be amended.

Depreciation Reports

New Requirements

On December 14, 2011, new requirements came into effect for Depreciation Reports.

Strata corporations need to obtain depreciation reports every three years unless they hold an annual $\frac{3}{4}$ vote to waive the requirement or have four, or fewer, strata lots.

If a strata corporation has already obtained a depreciation report, that meets the new requirements, it will have three years to obtain another report.

Please note, there are different timing requirements for obtaining the first depreciation report depending on when the strata corporation was formed.

- For strata corporations formed **on or before** December 14, 2011, a depreciation report is required by December 13, 2013.
- For strata corporations formed **after** December 14, 2011 a depreciation report is required within 6 months after their second AGM.

Inside

- New Requirements
- Overview
- What must be included
- Cost to Prepare
- Getting Ready
- Qualifications
- Resources

Overview

Depreciation reports helps strata corporations, including bare-land strata corporations, plan for the repair, maintenance and replacement of common property, limited common property and common assets over a 30 year period.

The report must contain:

- A physical inventory of the common property and assets.
- Anticipated maintenance, repair and replacement costs for common expenses projected over 30 years.
- A financial forecasting section with at least three cash flow funding models.

Depreciation reports provide useful information to strata lot owners, prospective purchasers, mortgage providers and insurance companies.

Depreciation reports are also known as reserve fund studies in other jurisdictions and have been a standard requirement in most Canadian provinces.

What must be included in a depreciation report?

A depreciation report must contain the following information:

- A physical component inventory and evaluation of applicable components as outlined in the Strata Property Regulation 6.2. Examples of the components that are to be reviewed for the depreciation report are listed below. (Please note, this is not a complete list and not all strata corporations will have all the components listed):
 - the building structure;
 - the building exterior including roofs, decks, doors and windows;
 - building systems such as electrical, plumbing, heating, fire, protection and security;
 - common amenities and facilities. (For example, a pool, exercise room, guest house);
 - parking facilities and roadways;
 - utilities, including water and sewage;
 - landscaping, including paths, sidewalks, fencing and irrigation;
 - interior finishes including floor covering and furnishings;
 - green building components; and
 - balconies and patios.
- A financial forecasting section that includes:
 - a projection of the anticipated maintenance, repair and replacement costs for the next 30 years and the factors and assumptions used, including interest rates and inflation rates;
 - at least 3 cash-flow funding models over 30 years;
 - the current balance of the contingency reserve fund (CRF) and how it is funded.
- A summary of the repair and maintenance work to be done (other than on an annual basis) over the next 30 years;
- The date of the report, the qualifications of the author(s) of the report, their relationship, if any, to the strata corporation and information on any errors and omissions insurance.
- Any other appropriate information or analysis.
- The report must also identify those parts of the common property and limited common property, if any, that individual owners are responsible to repair and maintain.

Depreciation reports provide helpful information to strata owners and prospective purchasers. They are a standard requirement in other jurisdictions and Canadian provinces where they are known as “reserve fund studies”.

How much do depreciation reports cost to prepare?

The cost would vary depending on the size of the strata corporation, the complexity of the development and who is hired to do the report – there are too many variables to estimate the costs with any certainty. The initial depreciation report usually costs more than subsequent updates. The cost, relative to the assets, is low and provides real value for owners and purchasers.

Preparing for a depreciation report

Strata corporations may want to consider the following steps in preparing for a depreciation report :

Prepare Basic Information: Initially you will need to provide information on total units, year built, floors, and general building and assets information – such as elevators, etc.

Do some research: Talk to other strata corporations similar to yours, review best practices and materials from strata owner associations and websites. (*See Resources Section at the end of this guide*). Write down all the questions you want to ask prospective firms or individuals. You can also check if the depreciation report will be available electronically and thus easier to update.

Gather relevant documents: You will need to provide documents that include those related to repair, maintenance, inspection, agreements with owners about repairs to strata lots, common property or limited common property, as well as financial records and the strata's bylaws.

Who is qualified to prepare the depreciation report?

The Strata Property Regulation does not specify who must prepare a depreciation report. The knowledge and expertise required to prepare a depreciation report for a six-plex may be considerably different than the qualifications and expertise required to prepare a depreciation report for a highrise residential tower with its own power generating plant, airspace parcel and underground parkade.

The person (or team) preparing the depreciation report must have the expertise to:

- understand the scope and complexity of the common property, limited common property, and common assets including individual components and their condition and life expectancy;
- provide the financial forecasting required; and
- understand the strata corporation's bylaws and any agreements entered into with owners respecting common property and strata lots.

It is possible that for some strata corporations, the expertise and knowledge may exist among the strata lot owners to prepare the depreciation report or assist the qualified person or team in preparing the report. The strata lot owners and strata council should carefully consider the responsibilities and risks involved in having a strata lot owner(s) prepare a depreciation report.

To find the right person or team to prepare your report, ask for recommendations from other Strata Corporations similar to yours, check with your strata property manager, and look online at best practice guides offered by strata organizations. Make a list of qualified individuals and firms and invite bids or proposals. Don't forget to check for references and sample reports.

The person, or team, preparing the depreciation report must conduct an on-site visual inspection of the strata corporation's building(s) and components; review both the common and limited common property; as well as any part of the strata lots that the strata corporation, by bylaw, is responsible to repair and maintain.

Recordkeeping

Depreciation Reports and the Form B (the Information Certificate):

The most recent depreciation report, if any, must be attached to the Form B (the Information Certificate).

Retaining Depreciation Reports and other related materials:

The strata corporation must:

- permanently retain any depreciation reports obtained by the strata corporation;
- retain until the disposal or replacement of those items, any reports obtained by the strata corporation respecting repair or maintenance of major items in the strata corporation, including, without limitation, engineers' reports, risk management reports, sanitation reports and reports respecting any items for which information is, under section 94, required to be contained in a depreciation report;

Additional Resources

Links to additional resources on Preparing Depreciation Reports

- www.housing.gov.bc.ca/strata/regs

Other Strata Property Act Resources

- Guides: www.housing.gov.bc.ca/strata/guides.htm
- Strata Property Act: www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/98043_00
- Strata Property Regulation:
www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/12_43_2000

Strata Organizations in British Columbia

- Condominium Home Owners' Association (CHOA): www.choa.bc.ca
- Vancouver Island Strata Owners Association: visoa.bc.ca

Additional References:

Sections of the Act referenced in this Guide: 1, 35, 59, 91-96, 98-101, 103, 105, 108, 109, 111, 158, 194, 195

Sections of the Regulations referenced in this Guide: 4.1, 6.2

Other Relevant Strata Property Guides:

- Guide 10: Strata Corporation Finances and Budgeting (updated March 2013)
- Guide 20: Who is Responsible for Repairs, for more information about who is responsible to maintain and repair various parts of the strata development.
- Guide 23: the Information Certificate (Form B)

Guide 13: How to Create or Amend Bylaws and Rules

1. The Purpose of Bylaws

Bylaws provide for the administration of the strata corporation and for the control, management, maintenance and use and enjoyment of the strata lots, common property and common assets of the strata corporation. Every strata corporation must have bylaws.

2. The Purpose of Rules

Rules can be created to govern the use, safety and condition of the common property and common assets. Rules may not govern the use of strata lots, as this can be accomplished only through a bylaw.

3. The Standard Bylaws

A strata corporation will initially have the Standard Bylaws contained in the Act unless they have been amended by the Owner Developer at the time the strata plan was filed.

4. Section Bylaws

The strata corporation's bylaws apply to a section unless they have been amended by the section. However, the bylaws may only be amended by a separate section if the bylaw amendment relates solely to the section.

A section may create bylaws that are particular to that section.

Please see "*Guide 28: Sections*" for information about sections.

5. Amending Bylaws Prior to the Second Annual General Meeting ("Second AGM")

To amend bylaws prior to the Second AGM a resolution passed by a unanimous vote at a special general meeting or the first annual general meeting is required for:

- bare land strata corporations;
- entirely residential strata corporations;
- mixed-use strata corporations that have not separated the residential and non-residential strata lots into separate sections; and
- residential sections.

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Non residential sections may amend bylaws prior to the Second AGM by a resolution passed by a $\frac{3}{4}$ vote (or some other voting threshold set out in a bylaw) at a special general meeting.

[Exception: A bylaw that allows other classes of persons to be council members can only be passed at an annual or special general meeting held after the First AGM.]

6. Amending Bylaws At or After the Second AGM

- wholly residential strata corporations or sections may amend their bylaws with a resolution passed by a $\frac{3}{4}$ vote at either the Second AGM or any subsequent general meeting; and
- mixed use strata corporations (that have not separated the residential and non-residential strata lots into separate sections) may amend their bylaws with a resolution passed by a $\frac{3}{4}$ vote at either the Second AGM or any subsequent general meeting.

7. Unenforceable Bylaws and Rules

A bylaw or rule is not enforceable to the extent that it:

- contravenes the Act, Regulations, Human Rights Code, or any other enactment or law;
- destroys or modifies an easement created under section 69 of the Act; or
- prohibits or restricts the right of an owner of a strata lot to freely sell, lease, mortgage or otherwise dispose of the strata lot or an interest in the strata lot.

Note: Bylaws that restrict the age of occupants or that reasonably govern activities relating to the sale of a strata lot including the location of signs, times for showing common property and “open houses” are permitted.

Some strata corporations can also restrict rentals; please see “*Guide 15: Rentals Permitted within a Strata Corporation*” for more information.

8. Fines for Contravention of Bylaws or Rules

The Act requires that the strata corporation set out in its bylaws the maximum amount it may fine an owner or tenant for each contravention of a bylaw or rule.

The bylaws may:

- set different maximum amounts of fines for different bylaws and rules; and
- set out the frequency at which fines may be imposed for continuing contravention.

The maximum amount of a fine that a strata corporation may set out in its bylaws for a breach of a bylaw or rule is:

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- \$200 for each contravention of a bylaw (other than breaches of rental restrictions);
- \$500 for each contravention of a rental restriction bylaw; or
- \$50 for each contravention of a rule.

The maximum frequency for the imposition of a fine for a continuing contravention of a bylaw or rule is every seven days.

9. Types of Bylaws Noted in the Act

Certain sections of the Act (which are noted in the brackets) specifically note that strata corporations may wish to consider creating the following bylaws:

- providing that a power or duty of the strata corporation which would otherwise be exercised or performed by the council cannot be exercised or performed by the council (4);
- allowing additional classes of persons to be council members (28(2));
- providing that no person can stand for or be on council if a lien can be imposed against their strata lot (28(3));
- determining the number of council members (29(1));
- providing for remuneration for council members (34(b));
- providing for attendance at an annual or special general meeting by telephone or any other method (49(1));
- restricting voting (except for unanimous votes) if the strata corporation can register a lien against the strata lot (53(2));
- changing the responsibility for the repair and maintenance of limited common property (72(2));
- requiring the strata corporation to take responsibility for the repair and maintenance of specified portions of a strata lot(s) (72(3));
- acquiring or disposing of personal property (82(3));
- changing the amount of unapproved expenditures which may be made from the operating fund (98(2));
- setting out a schedule for the payment of strata fees;
- set out the rate of interest on the late payment of strata fees or special levies provided that the rate does not exceed the maximum amount set out in the Regulations (107 and 108);
- governing activities relating to the sale of a strata lot (122);
- establishing a voluntary dispute resolution process (124);

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- allowing non residential strata lots to amend bylaws other than by a $\frac{3}{4}$ vote (128(1));
- changing the maximum fines for contravention of bylaws and rules (132);
- restricting rentals (141);
- designating an insurance trustee (156);
- eliminating the need for a $\frac{3}{4}$ vote to authorize a small claims court proceeding to collect money owing to the strata corporation (171(4));
- identifying types of strata lots for the purpose of allocating contributions to the operating fund which relate to and benefit types of strata lots (Regulation 6.4); and
- setting out the user fees for the use of common property (Regulation 6.9).

10. Procedure to Create or Amend Bylaws

The following steps should be taken by the strata corporation or section to create or amend bylaws:

- the strata corporation or section must give at least two weeks' written notice of an annual or special general meeting unless the meeting has been waived.

The notice must include the proposed wording of the new bylaw or amendment to an existing bylaw;

- during the meeting amendments may be made to the proposed wording of the resolution if the amendments do not substantially change the resolution and are approved by $\frac{3}{4}$ vote before the vote on the resolution;
- bylaw amendments must be approved by the voting thresholds explained in part 5 of this guide "Amending Bylaws At or After the Second AGM";
- new and amended bylaws must be filed in the form "Amendment to Bylaws" (Form I) at the Land Title Office. New and amended bylaws do not take effect until they are filed at the Land Title Office; and
- the strata corporation must inform owners and tenants as soon as "feasible" after the bylaw amendment is approved.

11. Reconsideration of a $\frac{3}{4}$ Vote

If a resolution requiring a $\frac{3}{4}$ vote was passed at a general meeting by persons holding less than 50% of the votes in the strata corporation, then the strata council cannot implement the resolution for one week, unless such action is needed to ensure safety or prevent significant loss.

Any $\frac{3}{4}$ vote passed by persons holding less than 50% of the votes must be retaken, if--- within one week of the general meeting---persons holding 25% of the strata corporation's votes demand a special general meeting to reconsider the resolution.

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For example:

- a strata corporation has persons who hold a total of **120** votes;
- under the Standard Bylaws, in order to have a quorum, the strata corporation would need eligible voters holding a minimum of **40** votes (1/3 of 120 total votes) either in person or by proxy. In this example, **51** votes are present, more than the minimum of 40 votes required for a quorum.
- The resolution needs to pass by $\frac{3}{4}$ vote. The $\frac{3}{4}$ vote is determined by those who vote for or against the resolution. It is not determined by the votes present, as abstentions are not counted. At this meeting a total **44** votes were cast; either for or against the resolution; with **33** votes in favour. The resolution passed by the required $\frac{3}{4}$ vote (33 out of 44).
- However, the **33** votes in favour of the resolution are less than **50%** or **60** of the total number of **120** votes. So the strata corporation must wait one week to implement the resolution because the resolution could be overturned. A vote must be retaken, if---within one week of the general meeting---persons holding at least **30** votes (i.e. 25% of the overall 120 votes in the strata corporation) demand a special general meeting to reconsider the resolution.

Example of Reconsidering a Resolution Passed by a $\frac{3}{4}$ Vote

Total # of votes in the strata Corp.	50% of the strata corp's votes	Quorum: 1/3 of total votes in the strata corporation	# of votes present in person or by proxy	# of votes for or against the resolution	# of votes In favor of the resolution	$\frac{3}{4}$ vote passed?	Did persons voting in favour hold less than 50% of strata corp's votes?
120	60	40	51	44	33	Yes, 33 out of 44 is 75 %	33 < 60 Votes Wait one Week

12. Provisional Exemptions (sometimes referred to as “Grandfathering”)

The Act contains specific provisions that delay the application of pet, age and rental restriction bylaws in some circumstances.

- A bylaw that prohibits pets does not apply to a pet living with an owner, tenant or occupant at the time the bylaw is passed and which continues to live there after the bylaw is passed;
- A bylaw that restricts the age of person who may reside in a strata lot does not apply to a person who resides in the strata lot at the time the bylaw is passed and who continues to reside there after the bylaw is passed; and
- If a rental restriction bylaw is passed, any owner with a rented strata lot subject to the new bylaw has time to adjust. The Act contains a delayed application provision with respect to those strata lots affected by rental restriction bylaws and a rental restriction bylaw would not apply to these strata lots until the later of:
 - One year after a tenant who is occupying the strata lot at the time the bylaw is passed ceases to occupy it as a tenant; or
 - One year after the bylaws is passed.

Please see *“Guide 15: Rentals Permitted within a Strata Corporation”* for more information on which strata lot owners may be subject to rental restriction bylaws.

13. Procedure to Create Rules

When making rules the strata corporation must:

- set out all rules in a written document that can be photocopied; and
- inform owners and tenants of any new rules as soon as feasible.

If a rule conflicts with a bylaw, the bylaw will prevail. The rule must be ratified by a majority vote at a general meeting; otherwise it ceases to have effect at the first AGM held after the rule was made.

References:

Sections of the Act: 28, 45, 50, 51, 119-128, 132, 143, 197

Guide 14: How to Enforce Bylaws and Rules

1. Who Must Comply with Bylaws and Rules

The following persons must comply with the bylaws and rules of a strata corporation:

- owners;
- tenants; and
- people living with or visiting owners and tenants.

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2. How to Process Complaints of Alleged Bylaw and Rule Violations

The following steps should be taken by parties in dealing with complaints of alleged bylaw and rule violations:

- the aggrieved party complaining of a bylaw or rule breach by another owner or tenant must make a complaint to the strata council;
- the strata council must then give the alleged bylaw or rule offender written notice of the complaint;
- if the alleged offender is a tenant, the strata council must also give the landlord and owner written notice of the complaint;
- the strata council must decide whether to proceed with enforcement. It may give the alleged bylaw or rule offender a warning or time to comply with the bylaw or rule. If the breach is corrected, the strata council may decide not to take any further steps. Alternatively, the strata council may proceed with enforcement;
- if the strata council decides to proceed with enforcement, it must give the alleged offender a reasonable opportunity to respond to the complaint, including an opportunity to respond at a hearing, if requested. The Regulations define hearing as "an opportunity to be heard in person at a council meeting";
- if the alleged offender is a strata council member, that member must excuse himself or herself from the complaint process, unless all strata lot owners are on the strata council;
- once the alleged offender has answered or been given a reasonable opportunity to answer the complaint, the strata council must decide whether a bylaw or rule has been breached by the alleged offender;
- if the strata council decides that a bylaw or rule has been breached, it must then decide how to enforce the bylaw or rule against the offender; and
- finally, the strata council must give written notice of its decision, "as soon as feasible" to:
 - the offender or alleged offender; and

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- the landlord and owner, if the offender or alleged offender is a tenant.

[Note: the strata council may give the alleged rule or bylaw offender a warning at any time before proceeding to enforce the rule or bylaw.]

3. Enforcement Options available to the Strata Council

If after following the above steps, the strata council has determined that a breach of a bylaw or rule occurred, they may do any of the following:

- impose a fine against an owner or tenant;
 - the fine must not exceed the maximum fine amount set out in the bylaws of the strata corporations;
 - the Standard Bylaws permit a fine of up to \$50 for a breach of a bylaw, and up to \$10 for a breach of a rule;
 - the maximum fine amounts in the Standard Bylaws can be changed by bylaw amendment, but they must never exceed \$500 for a rental restriction bylaw breach, \$200 for any other bylaw breach, and \$50 for a breach of a rule; and
 - the bylaws may set out different maximum fines for breaches of different bylaws and rules.
- re-impose a fine;
 - if a bylaw or rule contravention has resulted in fining the offender, fines may be re-imposed for a continuing contravention of a bylaw or rule without going through a new complaint process; and
 - fines can be re-imposed no more frequently than set out in the bylaws.

The Standard Bylaw provide that fines can be re-imposed once every seven days. This bylaw can be amended to decrease but not increase the frequency of re-imposing fines.

- give the offender a warning;
- give the offender or landlord time to comply with the bylaw or rule that has been breached;
- restrict access to a recreational facility;
 - this restriction may be against the strata lot owner, tenant, or an occupant or visitor who has breached the bylaws or rules;
 - the bylaw or rule breached must relate to the use of the recreational facility that is restricted;
 - the restriction can only be for a reasonable period of time.
- remedy the breach and recover all reasonable costs from the offender.

4. Unenforceable Bylaws

Bylaws and rules are unenforceable if they:

- contravene the Act, Regulations, *Human Rights Code* or another enactment or law;

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- destroy or modify an implied easement created under the Act;
- prohibit or restrict an owner from freely selling, leasing, mortgaging or otherwise disposing of his or her strata lot;
 - however, bylaws may be created to:
 - reasonably control the activities relating to the sale of a strata lot, including the placement of “For Sale” signs and open house times;
 - limit the rental of strata lots subject to the Form J. Please see “*Guide 15: Rentals Permitted with Strata Corporations*” for more information;
 - restrict the age of persons residing in the strata lot in accordance with the *Human Rights Code*.

5. How Strata Corporations Can Collect Fines

Strata corporations can collect fines and other costs incurred in remedying breaches by the following methods:

- sue the owner or tenant in Court;
 - the strata corporation must give the owner or tenant and any mortgagee who has requested notice, at least two weeks’ notice demanding payment and of its intention to sue if payment is not received;
[Please refer to part 6 of this guide for an explanation of how the notice period runs.]
 - the owner or tenant may be able to pay money which is in dispute into court, or to the strata corporation to hold in trust, if a court proceeding has started; and
 - once a court order against the owner has been obtained, the strata corporation can enforce it against the owner through various collection methods permitted by law.
- arbitrate the matter;
 - the strata corporation must give the owner or tenant and any mortgagee who has requested notice, at least two weeks' notice demanding payment and of its intention to initiate arbitration proceedings if payment is not received; [see part 6 for an explanation of how the notice period runs.]
 - the owner or tenant can pay money which is in dispute to the strata corporation to hold in trust if the arbitration proceeding has started; and
 - an arbitrator’s decision may be filed in the Supreme Court if the amount awarded is over \$25,000 or it may be filed in Small Claims Court, if the amount awarded is under \$25,000. On being filed, it will have the same effect and all proceedings may be taken against the owner as if it were a court order.

- refuse to produce a “Certificate of Payment” (Form F);
 - the strata council can refuse to issue a “Certificate of Payment” (Form F) to an owner or to a purchaser of an owner’s strata lot, if amounts are owing to the strata corporation and arrangements to pay as set out in the Act have not been made.

6. Giving Notice and Calculating the Notice Period

The strata corporation can give notice to an owner of its intention to commence legal action or arbitration in order to collect fines and other costs incurred in remedying a breach of a bylaw in the following ways:

- if a person has provided the strata corporation with an address for receiving notices that is outside of the strata development, then notice can be delivered by:
 - personally leaving it with the person; or
 - mailing to the address provided by the person;
- if a person has not provided the strata corporation with an address for receiving notices that is outside of the strata development, then notice can be delivered by:
 - personally leaving it with the person;
 - leaving it under the door of the person’s strata lot;
 - leaving it with an adult occupant of the person’s strata lot;
 - mailing to the strata lot address;
 - putting into the mail box or mail slot for the strata lot;
 - faxing it to a fax number provided by the person; or
 - emailing it to an email address provided by the person.
- if notice has been given by any of the above methods, except by giving it to the person, the notice is deemed to be received by the person four days after it was given.
- Under the Interpretation Act, if the reference to time includes phrases such as “clear” days or weeks, or “at least” in reference to days or weeks, the time must be calculated by excluding the first day and the last day of the period. Another way of thinking about the days that must be excluded is to think that nothing can happen on those days.
- Thus, when calculating the number of days within the two week notice period for commencing court action or arbitration, the day the notice is given (Day 1 on the chart below), or is deemed to be received (Day 5 on the chart below) cannot be counted as one of the days. The court action or arbitration cannot commence on the last day of the notice period (Day 15 or Day 19 on the chart below). It can commence on any of the days following the last day of the notice period (Day 16 or Day 20 on the chart below).

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Example of How the Notice Period Runs

Type of Notice	When delivery is initiated	When Notice is given	When Notice period starts to run	When the Notice period stops running	When AGM can be held
Deemed Notice: <ul style="list-style-type: none"> • Mailing to address provided by the person; • Leaving it under the strata lot door; • Leaving it with an adult in the strata lot; • Mailing it to the strata lot address; • Putting it in the strata lot’s mail box; • Faxing it to a fax number provided by the person; • Emailing it to an email address provided by the person. 	Day 1	Day 5, Notice is “deemed” to be received after 4 days	Day 6, the 2 week period starts on this day	Day 19, the 2 week period ends on this day	Day 20 or later
Actual Notice: <ul style="list-style-type: none"> • Actually handing it to the person. 	Day 1	Day 1	Day 2	Day 15	Day 16 or later

7. Enforcement Against Tenants

Under the *Strata Property Act*, there are additional requirements for enforcing bylaws and rules against tenants, which outlined below.

(Note: in addition to the *Strata Property Act*, residential strata tenancies in British Columbia are governed by the *Residential Tenancy Act* (RTA). More information on the RTA and the rights and responsibilities of tenants and landlords can be found at the Residential Tenancy Branch website here: <http://www.rto.gov.bc.ca/default.aspx>).

Under the *Strata Property Act*:

- an owner who rents his or her lot must provide the tenant with:
 - a “Notice of Tenant’s Responsibilities” (Form K), which must be signed by the tenant;
 - a copy of the bylaws;
 - a copy of the rules; and
- within two weeks of renting a strata lot to a tenant, the landlord must give the strata corporation the Form K signed by the tenant;

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[Note: if an owner fails to comply with any of the above requirements, the tenant is still bound by the bylaws and rules of the strata corporation, but the tenant may terminate the tenancy, within 90 days of the contravention if he or she chooses, and recover reasonable moving expenses from the owner.]

- the strata corporation may collect a tenant's fines or costs of remedying a contravention from either the tenant or the landlord; and

[Note: if the strata corporation collects a tenant's fine from the landlord, then the tenant owes that sum to the landlord.]

- serious and repeated breaches by a residential tenant may give a landlord grounds to evict the tenant.
- The strata corporation may be able to evict a residential tenant who repeatedly breaches reasonable and significant bylaw or rules, if there is serious interference with the rights of other persons in the strata development.

References:

Sections of the Act: 61, 69, 112-118, 121, 122, 125, 129-137, 146, 171, 173, 176, 177

Sections of the Regulations: 7.1 Sections of Standard Bylaws: 23

Please also see

- Strata Property Act "*Guide 6: The Role and Responsibilities of Tenants and Landlords*"
- Residential Tenancy Act information available at the Residential Tenancy Branch website:
<http://www.rto.gov.bc.ca/default.aspx>

Guide 15: Rentals Permitted within a Strata Corporation

For strata corporations without rental restriction bylaws, residential strata owners generally may rent their strata lots.

For strata corporations with rental restriction bylaws, rentals generally may still occur as follows:

- to family members (as defined by the Act, see part 1 of this guide);
- for a hardship exemption (see part 2 of this guide); and
- as permitted under a Rental Disclosure Statement (Form J, please see part 3 of this guide for more information).

Note: in addition to strata bylaws, there may also be applicable local government zoning which could restrict rentals. Zoning information is available from the local government, such as a municipality, where the strata lots are located.

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1. Rental to a Family Member

A rental restriction bylaw does not apply to prevent the rental of a strata lot to a family member. Under the Act, a family member is defined as:

- a spouse of the owner;
- a parent or child of the owner; or
- a parent or child of the spouse of the owner.

A “spouse of the owner” includes an individual who has lived and cohabited with the owner for a period of at least two years at the relevant time, in a marriage-like relationship including a marriage-like relationship between persons of the same gender.

A rental to a family member creates an assignment of the owner’s powers and duties under the Act, Regulations, bylaws, and rules.

[For more information on rentals, including rentals to family members, please refer to “*Guide 6: The Role and Responsibilities of Tenants and Landlords*”.]

2. Exemption for Hardship

An owner may apply to the strata corporation for an exemption from a rental restriction bylaw on the grounds that the bylaw causes hardship to the owner. Please note, neither the Act nor the Regulations define “hardship” although there have been some court rulings.

An application for the hardship exemption must:

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- be made in writing;
- state the reason why the owner thinks an exemption should be made; and
- indicate whether the owner wishes a hearing.

The Regulations provide that a “hearing” means “an opportunity to be heard in person at a council meeting”.

When a hardship application has been made, the strata council must:

- hear the owner or owner’s agent within four weeks of the date of the application, if the owner requests a hearing;
- give its decision in writing to the owner within one week of the hearing;
- give its decision in writing within two weeks after the owner applied for the exemption if no hearing is held or requested.

If the strata council fails to provide its decision within the time specified, or fails to hold a hearing within four weeks after the date the application is given to the strata corporation, the exemption is allowed, and the owner would be permitted to rent the strata lot.

- An exemption granted by the strata corporation may be for a limited time.
- The strata corporation must not unreasonably refuse to grant an exemption.

3. Rentals which are permitted under a Rental Disclosure Statement (“Form J”)

Rental disclosure statements are filed by the Owner Developer. Under the Act, Owner Developers must provide prospective purchasers with a “Rental Disclosure Statement” (Form J) which has been filed with the Superintendent of Real Estate, if the Owner Developer intends to rent or preserve the right to rent any of the residential units.

The Form J:

- describes the strata lots which may be rented; and
- sets out the date during which the rentals may occur.

The effect of Form J depends on when it was filed.

- A. For Rental Disclosure Statements filed on or before **December 31, 2009** a lot that has been designated as a rental lot by the Owner Developer on Form J remains eligible as a rental lot (regardless of rental restriction bylaws) until the lot is either conveyed by the first purchaser or the date on the Rental Disclosure Statement expires (whichever occurs first).

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For the Owner Developer or the first purchaser from the Owner Developer, the effect of the Form J is to preserve the right to rent the strata lot for the length of time set out in the Form J (filed on or before December 31, 2009) regardless of any subsequent rental restriction bylaws.

For Rental Disclosure Statements filed on or before **December 31, 2009** a purchaser who buys the strata lot from someone other than the Owner Developer does not have a right to rent the strata lot. In such circumstances, the strata lot may only be rented by a subsequent purchaser if:

- there is no rental restriction bylaw;
- the owner is permitted to rent despite a rental restriction bylaw on the basis of:
 - the family member exception;
 - a determination of hardship by the strata council;
 - the provision which delays the application of a rental restriction bylaw.

- B. For Rental Disclosure Statements filed on or after **January 1, 2010** the ability to rent a strata lot will be established at the time of filing by the developer. A strata lot eligible as a rental remains designated as a rental until the date the rental period expires (as per Form J, the Rental Disclosure Statement) and is not affected by any subsequent rental restriction bylaws.

This means the right to rent a strata lot continues from one purchaser to the next, if the rental period on the Form J remains unexpired. This applies to Rental Disclosure Statements filed on or after **January 1, 2010**.

4. **What is a Rental Restriction Bylaw?**

Given the factors governing strata lot unit rental discussed above, a strata corporation may develop and pass a rental restriction bylaw in order to:

- limit the number of strata lots that may be rented; or
- limit the length of time the strata lots may be rented.

A bylaw that limits the number of strata lots that can be rented must also set out the procedure to be followed in administering the limit.

A rental restriction bylaw cannot prevent, or include within the limit:

- rentals to family members; and
- rentals permitted on the basis of hardship.

5. Phasing in Rental Restriction Bylaws

If a rental restriction bylaw is passed, any owner with a rented strata lot subject to the new bylaw has time to adjust.

The Act contains a delayed application provision with respect to those strata lots affected by rental restriction bylaws and a rental restriction bylaw would not apply to these strata lots until the later of:

- one year after a tenant who is occupying the strata lot at the time the bylaw is passed ceases to occupy it as a tenant; or
- one year after the bylaw is passed.

6. Strata Corporations and Tenants

The strata corporation cannot:

- screen tenants;
- establish screening criteria;
- require that it approve of tenants; or
- require the insertion of terms in tenancy agreements or otherwise restrict the rental of a strata lot except by a bylaw that limits the rental of residential strata lots.

7. If the Rental of a Strata Lot Violates the Rental Restriction Bylaw

If the strata lot owner has rented despite being subject to a rental restriction bylaw:

- the strata council can proceed to fine the strata lot owner as long as the maximum amount of the fine is set out in the bylaws;
- the maximum amount which can be set out in a bylaw for a breach of a rental restriction bylaw is \$500;
- the bylaws may provide that a fine will be re-assessed for a continuing breach to a maximum frequency of every seven days;
- the Act specifically provides that the tenant is not in contravention of the bylaw; and

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- the Act provides the tenant with the right to end the tenancy agreement within ninety days of learning of the breach of the bylaw by the strata lot owner and the landlord must pay the tenant's reasonable moving expenses to a maximum of one month's rent if the tenant ends the tenancy agreement within ninety days of learning of the breach.

References:

Sections of the Act:

130, 132, 139 – 144

Sections of the Regulations:

4.01, 7.1, 8.1, 8.2

Please also see

- Strata Property Act "*Guide 6: The Roles and Responsibilities of Tenants and Landlords*"
- Strata Property Act "*Guide 25: What to Know About Resolving Complaints*"

Guide 16

What to Know about Age Restriction Bylaws

This Guide is currently being updated.

Guide 17: What to Know about Pet Bylaws

1. **Pet Restrictions**

Strata corporations can restrict owners, tenants and other occupants from keeping pets or certain kinds of pets through the bylaws of the strata corporation. The bylaws might do any of the following:

- limit the number of pets that can be kept;
- provide restrictions on keeping pets, such as leashing them in common areas;
- limit the kind of pets that can be kept, such as no dogs, or no dogs over 20 kilograms; and
- require pets to be registered with the strata council.

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2. **Pet Restrictions Under the Standard Bylaws**

Standard Bylaw 3(4) provides that: an owner, tenant or occupant must not keep any pets on a strata lot other than one or more of the following:

- a reasonable number of fish or other small aquarium animals;
- a reasonable number of small caged mammals;
- up to two caged birds;
- one dog or one cat

The Standard Bylaws also require owners, tenants, occupants or visitors to ensure that all animals are leashed or otherwise secured when on the common property or on land that is a common asset.

3. **Strata Corporations that Do Not Wish to Adopt Standard Bylaw 3(4)**

Strata corporations can disapply Standard Bylaw 3(4) at any time by passing their own bylaw which deals with pets and filing the bylaw in the Land Title Office. (Please see Guide 13: How to Create or Amend Bylaws and Rules".)

4. **"Grandfathering": Exempting Pets Living in Strata Lots when Pet Bylaws Change**

If a strata corporation creates a new pet bylaw that restricts the keeping of pets:

- pets that are living in a strata lot with an owner, tenant or occupant
- at the time **that the bylaw is passed** (i.e. not the date when the bylaw is filed in the Land Title Office)

may continue to live in that strata unit. The pets may not be replaced unless the new pet meets the requirements of the pet bylaw.

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Guide 17: What to Know about Pet Bylaws

Strata corporations may wish to consult a lawyer with respect to the *Guide Animal Act* and accommodating owners or tenants who have guide dogs or other guide animals.

Other References:

Sections of the Act: 123

Sections of the Regulations: 17.11, 17.12

Standard Bylaws: 3(3), 3(4)

The Guide Animal Act, Province of BC

Strata Property Act Guide 13: How to Create or Amend Bylaws or Rules

Guide 18: What to Know about Limited Common Property and Short Term Exclusive Use Arrangements of Common Property

Strata lot owners and tenants may be able to prevent other strata lot owners from using parts of the strata development even though the area is designated as common property and is not designated as part of the strata lot. The different kinds of common property areas of a strata development which can be restricted for the use of one or more strata lot owners are explained in this guide.

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1. Common Property that can be Exclusively Used

Areas designated on a strata plan as common property may be restricted for the use of one or more strata lot owners or tenants if the common property is:

- designated as limited common property (“LCP”):
 - LCP is common property designated for the specific use of a strata lot or strata lots;
 - LCP must either be noted on the registered strata plan or on a sketch plan attached to a resolution filed at the Land Title Office.
- granted to owners or tenants for a short term exclusive use arrangement:
 - the strata council has the power to enter into a short term exclusive use arrangement with owners or tenants over common assets or common property that are not designated as LCP.

2. Designating and Removing a Designation of LCP (Limited Common Property)

Common property may be designated as Limited Common Property (LCP) by the following methods:

- the Owner Developer can designate areas as LCP on the strata plan when it is deposited at the Land Title Office:
 - the strata corporation will need to obtain a unanimous resolution to remove LCP designated in this manner.
- the Owner Developer can designate parking stalls on a strata plan as limited common property at any time before the first annual general meeting, or if the strata development is phased, on a phased strata plan at any time before the first annual general meeting of that phase:
 - the Owner Developer does not need to obtain a resolution of the strata corporation to do this;
 - the strata corporation will need to obtain a unanimous resolution to remove parking spaces designated as LCP in this manner.

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- the strata corporation can amend the strata plan to add LCP:
 - such a strata plan amendment requires a unanimous resolution to be passed at an annual or special general meeting;
 - the strata plan amendment is filed at the Land Title Office with:
 - a reference or explanatory plan that shows the amendment, as required by the registrar of the Land Title Office; and
 - a “Certificate of Strata Corporation” (Form E) stating that the resolution has been passed and that the reference or explanatory plan conforms to the resolution.
 - a designation of LCP on a strata plan created by way of a plan amendment can only be removed with a unanimous resolution and by filing a new plan amendment which shows the removal of the LCP.
- the strata corporation can designate an area as LCP by filing a sketch plan at the Land Title Office:
 - the designation of LCP in this manner requires the strata corporation to pass a resolution approved by a $\frac{3}{4}$ vote at an annual or special general meeting;
 - the resolution needs to be filed at the Land Title Office with a sketch plan that is satisfactory to the registrar and shows:
 - all the areas that are being designated as LCP; and
 - which strata lot will be entitled to the use of the newly designated LCP.
 - LCP designated in this manner can be removed by filing a resolution passed by a $\frac{3}{4}$ vote, which approves the removal of LCP in the Land Title Office. A subsequent sketch plan does not need to be filed.

3. Creating and Cancelling a Short Term Exclusive Use Arrangement of Common Property

The following provisions apply to creating and cancelling short term exclusive use arrangements:

- a short term exclusive use arrangement of common property is granted specifically to an owner or tenant by the strata council, and is not attached to the strata lot, so if an owner sells his or her strata lot or a tenant ends his or her tenancy, the short term exclusive use arrangement will automatically terminate;
- however, if the short term exclusive use arrangement significantly changes the original use or appearance of common property or land that is a common asset, the short term exclusive use arrangement cannot be made by the strata council without a resolution passed by a $\frac{3}{4}$ vote of the strata corporation at an annual or special general meeting;

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- a short term exclusive use arrangement cannot be for a period of more than one year, but can be renewed for additional terms of not more than one year;
- the strata council may place conditions on an owner's exclusive use of common property or assets in a short term exclusive use arrangement; and
- the strata council may cancel a short term exclusive use arrangement without any reason by giving the owner or tenant reasonable notice of the cancellation.

4. Repair of LCP and Common Property with a Short Term Exclusive Use Arrangement

Usually, a strata corporation has an obligation to repair and maintain LCP and common property that is used by an owner or tenant in accordance with a short term exclusive use arrangement. However, the strata corporation bylaws:

- can be created to obligate an owner to repair and maintain LCP that is designated for the use of that owner; but
- cannot be created to obligate the owner or tenant to repair and maintain common property that is used in accordance with a short term exclusive use arrangement.

The Standard Bylaws require an owner to repair and maintain LCP, but not:

- if the repair or maintenance would generally occur less often than once year;
- to repair the structure or exterior of the building such as: chimneys, stairs, balconies, other things attached to the exterior, doors, windows or skylights that front the common property; or
- to repair fences, railings or similar structures that enclose patios, balconies or yards.

[For more information on repairs please refer to "*Guide 20: Who is Responsible for Repairs*".]

5. Bylaws and Rules for LCP and Common Property with a Short Term Exclusive Use Arrangement

The management, maintenance, use and control and enjoyment of common property (including LCP) and common assets within the strata corporation can be provided for with bylaws:

- new bylaws must be approved by the strata corporation and filed in the Land Title Office.

Only the use, safety and condition of common assets, common property and LCP can be provided for with rules:

- rules are kept within the strata corporation records and not filed in the Land Title Office;
- rules must be ratified by majority vote at the next annual general meeting following the creation of the rule;

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- owners and tenants must be informed of new rules as soon as feasible;
- rules must be in a written form that can be photocopied.

[For more information on bylaws and rules please refer to “*Guide 13: How to Create and Amend Bylaws and Rules*”.]

6. Alteration of LCP or Common Property with a Short Term Exclusive Use Arrangement

The Standard Bylaws provide that alterations by an owner to common property, LCP, or common property with a short term exclusive use arrangement:

- requires written approval from the strata corporation; and
- may require, as a condition of approval for the alteration, that the owner agree in writing to take responsibility for any expenses relating to the alteration.

A resolution passed by a $\frac{3}{4}$ vote at an annual or special general meeting must be obtained if the alteration will result in a significant change in the use or appearance of common property or a common asset.

7. Access to LCP and Common Property with a Short Term Exclusive Use Arrangement

To enable the strata corporation to exercise its powers and perform its duties an owner or tenant must allow the strata corporation reasonable access to LCP or to common property or a common asset that is subject to a short term exclusive use agreement.

8. User Fees For the Use of Common Property

A strata corporation may impose a user fee for the use of common property. A strata corporation that wishes to do this must ensure that the amount of the fee is reasonable and the fee is set out in either:

- a bylaw; or
- a rule that has been ratified at the first annual general meeting following the creation of the rule.

References:

Sections of the Act: 71-77, 110, 119, 125, 257, 258

Regulations: 6.9, 13.6

Standard Bylaws: 6, 8

Guide 19: How to Alter Unit Entitlement

1. What is Unit Entitlement?

Unit entitlement is a number assigned to each strata lot that determines:

- a) the share of common property and assets belonging to each strata lot; and
- b) the share of strata corporation expenses and liabilities of each strata lot owner.

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2. Where Do I Find My Unit Entitlement?

A Schedule of Unit Entitlement for all strata lots is filed in the Land Title Office in:

- Form V, if the strata plan was filed on or after July 1, 2000; and
- Form 1, if the strata plan was filed before July 1, 2000.

3. How Is Unit Entitlement Calculated?

When filing the strata plan under the Act, the Owner Developer will create a Schedule of Unit Entitlement as follows:

- c) residential building strata lots:
 - a whole number based on habitable area in square metres;
 - a whole number that is the same for all residential strata lots; or
 - some other number approved by the Superintendent of Real Estate that is equitable.
- d) non-residential building strata lots:
 - a whole number based on area in square metres;
 - a whole number that is the same for all non-residential strata lots; or
 - some other number approved by the Superintendent of Real Estate that is equitable.
- e) bareland strata lots:
 - a whole number that is the same for all lots; or
 - some other number approved by the Superintendent of Real Estate that is equitable.
- f) mixed use building strata lots:
 - a number approved by the Superintendent of Real Estate that is equitable.

The Regulations define habitable area as “the area of a residential strata lot which can be lived in, but does not include patios, balconies, garages, parking stalls or storage areas other than closet space”. A British Columbia land surveyor determines the habitable area.

4. **How Do I Change Unit Entitlement?**

There are three methods of changing unit entitlement:

a) **Land Title Office remedy** in the case of error:

- if there was an error made in measuring the strata lots, the registrar of the Land Title Office can be asked to correct it; and
- the registrar of the Land Title Office will then decide whether the error should be corrected.

b) **court remedy** – a person may apply to Supreme Court to have the unit entitlement changed to reflect the correct area or habitable area if:

- the Schedule of Unit Entitlement does not match the area or habitable area of the strata lots and unit entitlement is based on area or habitable area;
- the inaccuracy was not contained in the original schedule of unit entitlement; and
- the difference between the existing unit entitlement and the correct unit entitlement is at least 10% or 20 square meters.

c) **changing habitable area with a unanimous resolution:**

- owners who wish to increase their habitable area must also alter their unit entitlement:
 - o if the unit entitlement is based on habitable area; and
 - o if the increase in habitable area combined with previous changes, is at least 10% or 20 square meters;

by doing the following:

- obtaining a unanimous resolution to change the habitable area and unit entitlement;
- creating a new Schedule of Unit Entitlement in accordance with the unanimous resolution;
- making an application to the Land Title Office to amend the unit entitlement, which requires the submission of the following documents:
 - o the new Schedule of Unit Entitlement:

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- ↪ must be signed by the Superintendent of Real Estate, if necessary; and
- ↪ must meet the other technical requirements of the Act.
- a Certificate of the Strata Corporation acknowledging:
 - ↪ that the unanimous resolution has been passed; and
 - ↪ that the new Schedule of Unit Entitlement conforms to the resolution.

5. Changing Habitable Area Without Changing Unit Entitlement

Owners can change the habitable area of their strata lot without altering the Schedule of Unit Entitlement, in the following two circumstances provided that they obtain prior written approval from the strata council to make the change:

- where habitable area is decreased; or
- where habitable area is increased, and the increase is under 10% and 20 square meters.

6. Changing Strata Fees Without Changing Unit Entitlement

A strata corporation can choose to calculate each strata lot's share of strata fees using a formula other than unit entitlement, by passing a unanimous resolution at an annual or special general meeting.

References:

Sections of the [Act](#): 1, 52, 70, 100, 246, 261

Sections of the [Regulations](#): 5.1, 14.2, 14.3, 14.12, 14.13

Guide 20: Who is Responsible for Repairs

1. The Responsibility to Repair and Maintain versus the Responsibility to Pay for Repair and Maintenance

Under the Act, Regulations and bylaws, there is a distinction made between:

- **who undertakes** the actual repair and maintenance of various parts of the strata development; and
- **who pays** for the maintenance and repair costs.

This distinction may result in:

- the strata corporation maintaining areas that are part of the strata lot or designated as limited common property, but
- the cost of the maintenance and repair being apportioned in the operating budget to the strata lots which have been maintained and repaired or have been allocated the limited common property (LCP).

The Act and the bylaws of the strata corporation (if the strata corporation has bylaws relating to repair and maintenance) determine whether the strata corporation or individual owners have the responsibility to undertake the actual repair and maintenance of various parts of the strata development.

If the strata corporation is responsible to undertake maintenance and repair, the Act and regulations determine how the costs for the maintenance and repair will be apportioned to strata lot owners. The apportionment of maintenance and repair costs incurred by the strata corporation cannot be changed with a bylaw amendment.

[Please see “*Guide 11: How to Apportion Expenses*” for more information about how expenses are apportioned to each strata lot.]

2. The Different Parts of the Strata Development

The duty to repair different parts of the strata development may depend on how they are designated on the strata plan.

- Each strata plan will use different symbols to denote the different parts of the strata plan.
- Review the legend or key on the strata plan to determine the meaning of the different symbols.

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The different kinds of designations are:

- **Strata Lot or Part of the Strata Lot:**

- the strata lot is owned solely by the owner;
- a building strata lot usually ends at the center of walls, floors and ceilings, but may have different boundaries, if shown on the strata plan;
- a bareland strata lot will consist of land and the boundaries will be shown on the strata plan; and
- the strata plan will contain a legend which will explain how strata lots are noted on the strata plan:
 - the legend on the strata plan below shows that strata lots are designated as "SL" with the strata lot number after it.

- **Common Property:**

- is the part of a strata development that is not part of a strata lot;
- each owner owns a share of the common property, as tenants in common, which is in proportion to the strata lot's unit entitlement; and
- the strata plan will contain a legend which will explain how the common property is noted on the strata plan:
 - the legend on the strata plan below shows that the common property is designated as "C" on the strata plan.

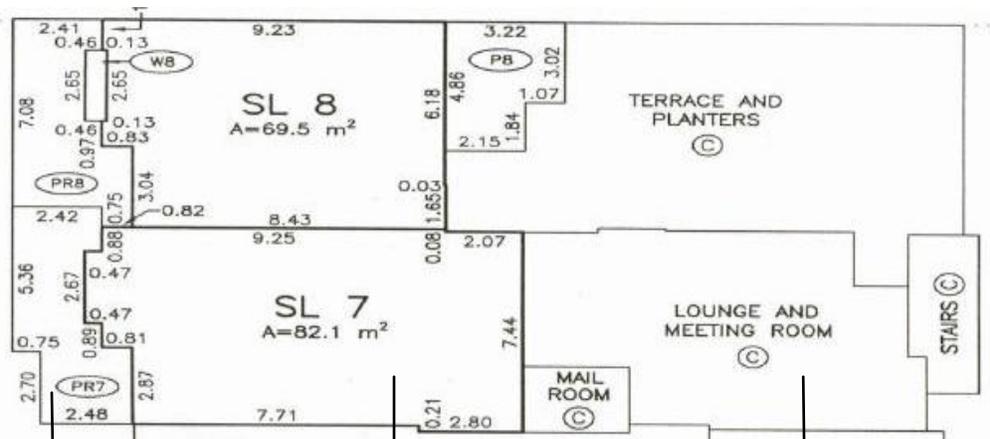
- **Limited Common Property (LCP):**

- is common property that has been designated on the strata plan or on a sketch plan filed at the Land Title Office, for the exclusive use of one or more strata lots;
- is often designated on the strata plan as "LCP" with the strata lot number after it; and
- the strata plan will contain a legend which explains how the limited common property is noted on the strata plan:
 - For example the legend on the strata plan below shows that the limited common property is designated as:
 - ↪ "P" with the strata lot number after it for patios;
 - ↪ "PR" with the strata lot number after it for porches; and
 - ↪ "W" with the strata lot number after it for bay windows.

Strata Plan Legend for Sample Strata Plan below

- SL:** denotes strata lot
- A:** denotes area
- PR:** denotes porch (limited common property)
- P:** denotes patio (limited common property)
- W:** denotes bay window (limited common property)
- C:** denotes common property

Sample portion of a strata plan



“PR7” denotes Porch Limited Common Property for strata lot 7

“SL7” denotes strata Lot 7

“C” denotes area that is Common Property

3. Common Property

The strata corporation is generally responsible for maintaining and repairing common property, including limited common property, (“LCP”) and common assets. With the exception of limited common property, common property and common assets cannot be made the responsibility of strata lot owners to repair and maintain.

4. Limited Common Property (“LCP”)

Under the Standard Bylaws, owners are required to maintain and repair LCP which they have the use of, except the following LCP, which the strata corporation repairs and maintains:

- structure of the building;
- exterior of the building;
- chimneys, stairs, balconies and other things attached to the exterior of the building;

- doors, windows and skylights on the exterior of a building or that front on the common property;
- fences, railings and similar structures that enclose patios, balconies and yards; and
- all LCP relating to repairs and maintenance that occurs less often than once a year.

The Standard Bylaws can be amended to change the different maintenance and repair responsibilities of owners and the strata corporation for LCP. If there are no bylaws relating to the repair of LCP, the Act provides that the strata corporation must undertake the repair and maintenance of common property (including LCP).

5. The Strata Lot in a Strata Development that is not Bareland

Under the Standard Bylaws, owners in a strata plan that is not bareland, are required to maintain and repair their strata lot, except the following parts of a strata lot, which the strata corporation maintains and repairs:

- structure of the building;
- exterior of the building;
- chimneys, stairs balconies and other things attached to the exterior of the 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.

The Standard Bylaws can be amended to change the different maintenance and repair responsibilities of owners and the strata corporation for parts of the strata lot.

If there are no bylaws relating to the repair and maintenance of portions of a strata lot by the strata corporation, each owner must repair and maintain their strata lot.

6. The Strata Lot in a Bareland Strata Plan

There is no provision in the Standard Bylaws to make the strata corporation responsible to maintain and repair parts of a strata lot in a bareland strata plan.

References:

Sections of the Act: 1, 66, 68, 72

Sections of Standard Bylaws: 2, 8

Guide 21: What to Know about Record Keeping

1. STRATA CORPORATION RECORDS

Records to be Kept Current:

The records that must be kept current and up to date by the strata corporation are:

- a list of strata council members, including either a phone number or other method by which the council member may be contacted at short notice (as long as the method is not prohibited in the bylaws);
- a list of owners, with their strata lot addresses, mailing addresses if different, strata lot numbers as shown on the strata plan, parking stall numbers, if any, and unit entitlements;
- the names and addresses of mortgagees who have filed a “Mortgagee's Request for Notification” (Form C);
- the names of tenants, and any assignments of voting or other rights by landlords to tenants; and
- the Act, Regulations, bylaws and rules.

Records to be Kept for Two Years:

The only record that must be kept for at least two years by the strata corporation is correspondence sent or received by the strata corporation and strata council.

Records to be Kept for Six Years:

The records that must be kept for at least six years by the strata corporation are:

- minutes of annual and special general meetings and strata council meetings, including the results of any votes;
- books of account showing money received and spent and the reason for the receipt or expenditure;
- any waivers of general meetings and consents of resolutions;
- the budget and financial statement for the current year and for previous years;
- income tax returns, if any;
- bank statements, cancelled cheques and certificates of deposit;
- any Information Certificates issued; and
- financial records obtained from the Owner Developer.

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*Content that has been updated has been highlighted in **bold italic font** and will remain that way for approximately one year.*

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Records to be Kept Permanently:

The records that must be kept permanently by the strata corporation are:

- any resolutions that deal with changes to common property, including the designation of limited common property;
- any decision of an arbitrator or judge in a proceeding in which the strata corporation was a party;
- any legal opinions obtained by the strata corporation.
- ***any depreciation reports obtained under section 94 of the Strata Property Act;***
- ***any repair or maintenance reports.***¹

Records Obtained from the Owner Developer to be Kept Permanently:

The records that must be delivered to the strata corporation by the Owner Developer at the first annual general meeting and kept permanently by the strata corporation are:

- the registered strata plan and any strata plan amendments registered at the Land Title Office;
- plans required to obtain building permits and any amendments to the building permit plans;
- Disclosure Statements and amendments, if any;
- the Rental Disclosure Statement, if any;
- the names and addresses of all contractors, subcontractors and persons who primarily supplied labour or materials to major components of the project;
- the name and address of the project manager, if any;
- the names and addresses of technical consultants, including any building envelope specialists, if any; and
- ***As outlined in Strata Property Act Sections 20 and 23***²
 - ***all manuals, schematic drawings, operating instructions, service guides, manufacturers' documentation respecting the construction, installation, operation, maintenance, repair and servicing of any common property or common assets for as long as the strata corporation retains the common property or common asset to which they relate; and***
 - ***all warranties for as long as the strata corporation retains the common property or common asset to which they relate or until the warranty expires (whichever comes first).***
- any document that indicates the actual location of a pipe, wire, cable, chute, duct or other facility for the passage or provision of systems or services, if the Owner Developer believes they are not shown on the plan submitted to obtain the building permit.

¹ Strata Property Act section 35(2)

² Please see Strata Property Act Section 35(2) (n)

Records to be Obtained from Owner Developer to be Kept for Limited Periods:

The records that the Owner Developer must deliver to the strata corporation at the first annual general meeting which strata corporations must keep are:

- contracts to which the strata corporation is a party, including insurance policies for at least six years after the contract or policy ends;

[Note: The Owner Developer may be required to deliver other documents to the strata corporation at the first annual general meeting, which are not described above. For more information please see "*Guide 2: The Role and Responsibilities of Owner Developers*".]

2. KEEPING RECORDS

The strata council:

- is responsible for keeping records on behalf of the strata corporation; but
- may delegate record keeping to a strata manager.

A strata manager:

- must keep records in accordance with the Act, Regulations and his or her contract;
- must return all strata corporation records that are in his or her possession or control within four weeks of the strata management contract ending; and
- who fails to return all records to the strata corporation within the required time must pay to the strata corporation \$1,000. This fine may be enforced through the courts.

The Owner Developer:

- must keep records in the same manner as the strata corporation when acting for the strata corporation;
- must provide the strata corporation with certain records (described above) at the first annual general meeting of the strata corporation, and if the Owner Developer fails to provide the documents, and the strata corporation must pay money to obtain any missing documents, the Owner Developer will owe that sum of money to the strata corporation. This sum can be collected by the strata corporation registering a lien against **one** of the Owner Developer's strata lots, if the Owner Developer still owns one or more strata lots;
- must keep all financial records, which relate to the strata corporation's finances while he or she acted for the strata corporation, for two years following the transfer of control of the strata corporation to the owners, and during this two year period must:
 - make these records available for inspection, free of charge to the strata corporation; and

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- allow the strata corporation to copy or audit the records at the expense of the strata corporation.

3. OBTAINING AND INSPECTING RECORDS

The following parties can inspect, at no charge or request copies of strata corporation records:

- strata lot owners;
- tenants who have been assigned an owner's rights to the records;
- tenants who are family members, as defined in the Regulations
- former owner (for the period during which the former owner was an owner in the strata corporation).
- former tenant (for the period during which the former tenant was a tenant and who had been assigned owner's rights to access strata corporation records).
- a person authorized in writing by the former owner or a former tenant (who has been assigned owner's rights to access records) for the period during which the former owner or tenant was an owner or tenant in the strata corporation.
- tenants who have leases of three years or greater; and
- persons authorized in writing by a strata lot owner or tenant (who has been assigned owner's rights) to access the records.

Tenants other than the tenants noted above, cannot have access to strata corporation records, except for the bylaws and rules.

Parties must be permitted to inspect or receive any requested copies of:

- the bylaws and rules within one week of the request; and
- all other records within two weeks of the request.

The costs that apply for copies of the strata corporation's records are up to 25 cents per page.

References:

Sections of the Act: 5, 20, 22, 23, 35-37

Regulations 4.1 – 4.3

Please also see ***"Privacy Guidelines for Strata Corporations and Strata Agents"***

issued July 30, 2009 by the Office of Information and Privacy Commissioner, at this website:

http://www.fic.gov.bc.ca/pdf/responsibilities_strata/GuidelinesStrataCorp.pdf

Guide 22: Certificates of Payment

1. When is a Certificate of Payment Issued?

A "Certificate of Payment" (Form F) must be issued when requested if:

- the owner does not owe money to the strata corporation; or
- money is owed and the owner has:
 - paid the disputed amount into court if court proceedings have been started and payment into court is permitted;
 - paid the disputed amount to the strata corporation to hold in trust if the matter has been referred to arbitration or if court proceedings have started; or
 - made satisfactory arrangements with the strata corporation to pay the money.

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2. Timing

The strata corporation is required to provide the Form F within one week of the request.

3. Who is Permitted to Request a Certificate?

An owner, purchaser or person authorized by the owner or purchaser may request a Form F.

- an owner under the Act is:
 - a registered owner of a strata lot, and includes trustees who hold title for the benefit of someone else;
 - a registered owner of a leasehold strata lot in a leasehold strata plan (who is referred to in the Act as a "leasehold tenant"), and includes trustees who hold title for the benefit of someone else;
 - a person registered on title as a holder of an agreement for sale of a strata lot, and in this case, the registered owner will not be an owner under the Act; and
 - a registered holder of a life estate (which is referred to in the Act as a "tenant for life") and in this case, the registered remainder owner will not be an owner under the Act.
- a purchaser under the Act is:
 - 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.

The Act does not provide that the agreement to purchase a strata lot be unconditional or free of subjects.

4. Who is Responsible for Preparing the Form F?

The Act makes the strata corporation responsible for providing the form. However, under the Act, the strata council carries out the duties of the strata corporation.

Where a strata corporation has employed a strata manager, it is often the strata manager who has the information necessary to complete the Form F. However, the responsibility for directing the strata manager remains with the strata council.

5. Information to be Disclosed

The Form F contains information on money owing by a strata lot to the strata corporation in respect of:

- strata fees;
- special levies;
- a reimbursement of the cost of work performed as a result of an owner failing to comply with an order from a public authority for work to be done on the strata lot;
- a strata lot's share of a judgment against the strata corporation;
- fines; and
- costs of remedying a contravention of a bylaw or rule for which the owner is responsible.

The Form F must not include claims of damages against an owner, which have not been determined by a court or by arbitration.

6. Fees

The maximum fee a strata corporation can charge for a Form F is \$15.

7. Effect of Form F

The Form F is current for sixty days and is required by the Land Title Office for the registration of the following pertaining to a strata lot:

- a lease or assignment of a lease;
- an agreement for sale; or
- a conveyance of title.

References:

Sections of the Act: 114 - 116, 256

Sections of the Regulations: 6.10

Guide 23: Information Certificates (Form B)

1. **Timing**

The strata corporation is required to provide the "Information Certificate" (Form B) within one week of the request.

2. **Who Can Request an Information Certificate?**

An owner, purchaser or person authorized by the owner or purchaser may request a Form B.

- an owner under the Act is:
 - a registered owner of a strata lot, and includes trustees who hold title for the benefit of someone else;
 - a registered owner of a leasehold strata lot in a leasehold strata plan (who is referred to in the Act as a "leasehold tenant"), and includes trustees who hold title for the benefit of someone else;
 - a person registered on title as a holder of an agreement for sale of a strata lot, and in this case, the registered owner will not be an owner under the Act; and
 - a registered holder of a life estate (which is referred to in the Act as a "tenant for life") and in this case, the registered remainder owner will not be an owner under the Act.
- a purchaser under the Act is:
 - 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.
 - The Act does not provide that the agreement to purchase a strata lot be unconditional or free of subjects.

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*Content that has been updated has been highlighted in **bold italic font** and will remain that way for approximately one year.*

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3. **Who is Responsible for Preparing the Form B?**

The Act makes the strata corporation responsible for providing the form. However, under the Act, the strata council carries out the duties of the strata corporation.

Where a strata corporation has employed a strata manager, it is often the strata manager who has the information necessary to complete the Form B. The responsibility for directing the strata manager, however, remains with the strata council.

4. Information to be Disclosed on the Form B

The Form B must disclose the following information with respect to the strata corporation and the strata lot and be current to the date of the certificate:

- the monthly strata fees payable by the owner;
- any amount that the owner owes the strata corporation (other than an amount paid into court or to the strata corporation in trust);
- any agreements by 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 which 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 a unanimous vote that is required to be filed in the Land Title Office but that has not yet been filed in that office;
- any notice that has been given for a resolution that has not been voted on, if the resolution requires a $\frac{3}{4}$ vote or unanimous vote or deals with an amendment to the bylaws;
- any court proceeding or arbitration in which the strata corporation is a party and any judgments or orders against the strata corporation;
- any notices or work orders received by the strata corporation that remain outstanding for the strata lot, the common property or the common assets;
- the number of strata lots in the strata plan that are rented;
 - ***[beginning January 1, 2014] details about any parking stalls and storage lockers allocated to the strata lot and their numbers;*** and
- any other information required by the Regulations.

[Note: Although the Act indicates any other information required by Regulation, there is no Regulation at this time that requires additional information, ***except for the additional details about parking and storage that will need to be disclosed on the revised Form B, which must be used after January 1, 2014.***]

5. Documents to be Attached

[Effective March 1, 2012, the new Form B lists these required attachments.]

The following documents must be attached to the Form B:

- the rules of the strata corporation;
- the current budget of the strata corporation;
- the Owner Developer's Rental Disclosure Statement ("Form J", if one was filed);
- ***the most recent depreciation report, if any;*** and
- the following as may be required:
 - agreements under which the owner has taken responsibility for expenses relating to alterations to a strata lot, common property or common assets;
 - resolutions requiring a $\frac{3}{4}$ or unanimous vote not yet voted on, or approved but not yet filed with the Land Title Office;
 - resolutions to amend the bylaws that have not yet been voted on, or bylaw amendments that are approved but not yet filed with the Land Title Office;
 - details of court proceedings or arbitrations involving the strata corporation;
 - outstanding notices or work orders for the strata lot, common property or common assets.

6. Certificate Binding on Strata Corporation

The information disclosed in the Form B is binding on the strata corporation in its dealings with a person who relied on the certificate and acted reasonably in doing so.

7. Fees

The maximum fee a strata corporation can charge for a Form B is \$35 plus the cost of photocopying up to 25 cents per page.

References:

Sections of the Act: 59

Sections of the Regulations: 4.4

Guide 24: What to Know About Contracting with a Strata Manager

1. The Role of a Strata Manager

A strata manager is a person who provides "strata management services" to the strata corporation. A strata corporation performs its duties under the *Strata Property Act* through the elected strata council. The strata council may delegate some of its duties to a strata manager by way of a contract.

Therefore, the relationship between a strata manager and a strata corporation is contractual. It is recommended that the rights and obligations and/or delegated authority of the strata manager should be clearly laid out in a strata management contract.

A strata manager acts on behalf of the entire strata corporation, and not just the strata council.

However, the strata council:

- gives instructions to the strata manager and is responsible for supervising his or her activities; and
- can be directed by the majority of the strata lot owners who are present, in person or by proxy, at a general meeting to deal with the strata manager in a certain way.

As of January 1, 2006, strata managers are required to be licensed under the *Real Estate Services Act*. Under the *Real Estate Services Act*, strata management services mean any of the following services provided to or on behalf of a strata corporation:

- (a)** collecting or holding strata fees, contributions, levies or other amounts levied by, or due to, the strata corporation under the *Strata Property Act*;
- (b)** exercising delegated powers and duties of a strata corporation or strata council, including:
 - (i)* making payments to third parties on behalf of the strata corporation,
 - (ii)* negotiating or entering into contracts on behalf of the strata corporation, or
 - (iii)* supervising employees or contractors hired or engaged by the strata corporation

but does not include any activity excluded by regulation;

The *Real Estate Services Regulation* provides some exemptions from the licensing requirement. Since licensing is required of those providing strata management services "to or on behalf of another, for or in expectation of remuneration", the licensing

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requirements of the *Real Estate Services Act* do not apply to strata lot owners in a self-managed strata corporation. Others who may be eligible for exemption from licensing include caretakers/managers employed by a strata corporation and Owner Developers who meet certain conditions.

The Real Estate Council of British Columbia (RECBC) is responsible for the licensing, education and discipline of real estate service providers, including strata managers.

RECBC enforces entry qualifications, investigates complaints against licensees for possible contraventions of the *Real Estate Services Act* and related legislation and imposes disciplinary sanctions under the *Real Estate Services Act* (but **not** the *Strata Property Act*).

2. **Typical Duties of a Strata Manager**

As noted previously, the relationship between a strata manager and a strata corporation is contractual and it is recommended that the rights and obligations and/or delegated authority of the strata manager be clearly laid out in a strata management contract.

Typical duties of a strata manager can include:

- arranging services for the strata corporation and entering into contracts for landscaping, insurance, electrical services, maintenance, etc.;
- hiring and supervising employees hired by the strata corporation;
- collecting strata fees and other money owed to the strata corporation;
- paying strata corporation bills;
- securing adequate strata insurance;
- keeping and permitting access to strata corporation records. [For more information on records please refer to "*Guide 21: What to Know about Record Keeping*";];
- preparing documents on behalf of the strata corporation such as "Information Certificates" (Form B) and "Certificates of Payment" (Form F);
- attending strata council meetings;
- preparing the minutes of all meetings, including strata council meetings and distributing the minutes to owners;
- advising the strata council in regard to the Act, the *Residential Tenancy Act*, and workers compensation matters; and
- preparing annual operating fund budgets and financial statements.

3. **Limitations of a Strata Manager**

Under the *Strata Property Act* and Regulations a strata manager cannot:

- act as an arbitrator in an arbitration proceeding without the consent of all parties;
- keep strata corporation records beyond four weeks after his or her termination;
- act as a proxy holder for any voter in the strata corporation;

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- hold a hearing on behalf of the strata council to determine whether an owner should be permitted to rent on the basis of hardship despite there being rental restriction bylaw; and
- hold a hearing on behalf of the strata council to determine whether an owner or tenant has breached a bylaw or rule.

Under the **Standard Bylaws**, a strata manager cannot:

- determine if a person has contravened a bylaw or rule;
- determine if a person should be fined or determine the amount of a fine for the contravention of the bylaws or rules;
- determine if a person should be denied access to a recreational facility;
- hold a strata council hearing on behalf of the strata council; and
- spend strata corporation money:
 - for a specific expenditure without a strata council resolution authorizing the specific expenditure; or
 - for general expenditures without a delegation of a general spending authority by a strata council resolution. The resolution must set out the maximum sums that can be spent, the purposes for which money can be spent and any conditions that have to be met before money can be spent.

4. Entering Into a Strata Management Contract

A strata management contract can be entered into by:

- the strata council on behalf of the strata corporation or the executive on behalf of a separate section:
 - however the strata council or executive of a separate section may be directed by the majority at a general meeting in relation to entering into the contract; and
 - any strata council or executive member who has a direct or indirect interest in a strata management contract must promptly disclose the interest, and cannot participate or vote in relation to the contract.
- the Owner Developer:
 - before the first transfer of a strata lot title;
 - after the first transfer of a strata lot title, but before the first annual general meeting, if the strata manager is at arm's length to the Owner Developer; and
 - after the first transfer of a strata lot title, but before the first annual general meeting, with a unanimous resolution of the strata corporation, if the strata manager is the Owner Developer or is not at arm's length to the Owner Developer.

5. How the Strata Manager is Paid

Before agreeing to the strata management fee, the strata council, executive or Owner Developer must ensure that the fee is approved:

- in the annual operating budget,
- by special levy, or
- as a contingency reserve fund expenditure until such time as this fee may be budgeted for in the annual operating budget.

6. Important Contract Elements

Strata management contracts should:

- be in writing;
- specify a list of duties, powers and limitations of strata managers;
- clearly specify how strata managers are to be paid, including whether fees paid by third parties, e.g. for the preparation of an "Information Certificate" (Form B) or a "Certificate of Payment" (Form F), belong to the strata corporation or to the strata manager;
- specify who will have signing authority for and access to strata corporation monies and in what kind of account the monies will be held in; and
- include clear termination procedures.

7. Termination of Strata Management Contracts

Strata management contracts entered into by the Owner Developer before the first annual general meeting will automatically terminate, despite any provisions within the contract, on the earlier of either:

- four weeks after the date of the second annual general meeting; and
[Note: the contract may continue if renewed by majority vote at the general meeting.]
- the cancellation date contained in the contract or agreed to by the parties.

Strata management contracts can be terminated without penalty to either party in the contract:

- under the terms specified in the contract;
- by the strata corporation with two months' notice to the strata management company, if first approved by a $\frac{3}{4}$ vote; or
- by the strata management company giving two months' notice to the strata corporation.

When a strata management contract ends, the strata manager must return all strata corporation records in his or her possession or control to the strata corporation within

four weeks of the contract termination. If a strata manager fails to do this, he or she will owe the strata corporation \$1,000.

8. Disputes with the Strata Manager

If individual strata lot owners or tenants have concerns about a strata manager, which may include disagreements with the action or lack of action taken by the strata manager on a particular issue, they are advised to first take their concerns to their strata council for consideration and any action the strata council may see fit to take.

This may include the strata council submitting a complaint to the Real Estate Council with respect to the conduct of the strata manager if the strata council believes the strata manager has contravened the Real Estate Services Act.

As a general policy, RECBC requires complaints regarding licensed strata managers to be submitted by strata councils, accompanied by a copy of the minutes of the council meeting that confirms the passing of a motion to submit such a complaint to RECBC. More information is available on RECBC's website at www.recbc.ca.

If an individual strata lot owner or tenant has a dispute with the strata manager, and if the strata council refuses to direct a strata manager's actions, the complainant may:

- request, in writing, a hearing at a strata council meeting to discuss their concerns regarding the strata manager and to seek a decision of the strata council;
- requisition a general meeting with a petition of 20% of the owners, to instruct the strata council to deal with the strata manager in a certain way or terminate the strata management contract; or
- add a resolution to the agenda of a general meeting with a petition of 20% of the owners, which seeks to instruct the strata council to deal with the strata manager in a certain way or terminate the strata management contract.

[Note: Directing the strata council for this purpose will require that a resolution be passed by a majority vote at a general meeting.]

References:

Sections of the Act: 4, 10, 24, 30, 32, 33, 34.1, 37-39, 135, 144, 179, 194

Sections of the Regulations: 7.2, 8.2, 18.1

Standard Bylaws: 15, 20, 21

Also please see

- the *Real Estate Services Act* and Regulations, and
- the website for the Real Estate Council of British Columbia at www.recbc.ca.

Guide 25: What to Know About Resolving Complaints

From time to time strata lot owners may become unhappy with the actions or inaction of their neighbours, the strata council, strata manager, or with a decision taken by the strata lot owners acting collectively.

Additionally, from time to time, the strata corporation may require assistance in enforcing the provisions of the Act, Regulations, bylaws and rules. The following material outlines the overall structure of the Act and the provisions in the Act which can be used to resolve complaints.

1. **Structure of the Strata Property Act**

The Act sets out the manner in which a strata corporation should operate and conduct its affairs. For example the Act provides:

- how to elect a strata council, the responsibilities of the strata council and how the strata council can be controlled;
- requirements relating to the records a strata corporation must maintain, and who has access to those records;
- procedures relating to calling and holding meetings, voting, and bylaw amendments;
- requirements relating to the finances of the strata corporation including the manner in which strata fees are calculated, budget approval, and requirements for a special levy.

The operation of a strata corporation and the decision making process are based on democratic principles. The following are examples of the provisions in the Act which create a democratic structure:

- every strata lot owner has a vote;
- a strata council is elected annually by the strata lot owners and is subject to the direction of the strata owners demonstrated by a majority vote at a general meeting;
- decisions at general meetings are generally approved by majority vote, unless the Act specifically provides a higher voting requirement;
- certain decisions such as creating or amending bylaws (unless the strata lots are commercial and a different voting threshold has been approved in a bylaw), the approval of special levies, significant changes to the use of common property, and expenditures from the Contingency Reserve Fund---all which would have a significant impact on strata owners----must be approved by a $\frac{3}{4}$ vote at a general meeting.

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Guide 25: What to Know About Resolving Complaints

The strata corporation will have bylaws and may have rules which operate as follows:

- bylaws can provide for the control, management, maintenance, use and enjoyment of the strata lots, common property and common assets and for the administration of the strata corporation;
- amendments to the Standard Bylaws must be approved by a resolution approved by a $\frac{3}{4}$ vote.

[Note: for residential strata corporations, amendments require a unanimous vote if bylaws are changed before the second annual general meeting; if the strata lots are non residential, bylaws may be amended prior to the second AGM by a $\frac{3}{4}$ vote or some other voting threshold set out in a bylaw.]

- rules can govern the use, safety and condition of the common property and common assets;
- rules must be ratified by a resolution approved by a majority vote at the first annual general meeting held after the rule is made.

The Act contains provisions which allow individual strata lot owners to make their views known to the strata corporation as a whole. Strata lot owners can:

- require that the strata corporation hold a special general meeting to consider a resolution or other specified matter, with the written support of 20% of the strata corporation's votes;
- propose a resolution or other matter to be included on a general meeting's agenda with the written support of 20% of the strata corporation's votes.

The Act provides that matters in dispute may be referred to either:

- arbitration ;
- Provincial Court (Small Claims Court);
- Supreme Court.

The Act is self-regulating which means that:

- owners and other interested parties must use the provisions of the Act (including arbitration and court action) to enforce the requirements of the Act;
- there is no government office which will:
 - investigate the activities of strata corporations;
 - order strata corporations, strata councils or strata lot owners to do, or refrain from doing, any act; or
 - interfere in the decisions of strata councils or strata corporations.

2. Role of Government

The Office of Housing and Construction Standards and the Superintendent of Real Estate's office cannot provide a legal opinion to strata lot owners, or pass an opinion on the appropriateness of a strata corporation's or strata council's actions.

A number of *Guides*, like this one, which relate to the Strata Property Act have been prepared to assist the public in understanding the rights and responsibilities of strata lot owners, tenants and strata corporations. The *Guides* are available on the Office of Housing and Construction Standards website at <http://www.housing.gov.bc.ca/strata/guides.htm>.

Parties dealing with a dispute within a strata corporation currently must be aware that it is the responsibility of the parties involved to resolve the matter through informal or formal processes. Legislation to establish a Civil Resolution Tribunal with authority to hear strata disputes has been passed; however, the Tribunal is not yet in operation.

3. Informal and Formal Dispute Resolution Processes

The Act provides strata lot owners with informal and formal mechanisms to resolve disputes.

The informal mechanisms to resolve disputes permit strata lot owners:

- to requisition a general meeting to consider a resolution or other specified matter;
- to place resolutions and other items on a meeting's agenda.

The Standard Bylaws contains provisions that:

- permit a dispute resolution committee to be used to resolve disputes if the use of a dispute resolution committee is agreed to by all parties involved in the dispute.
- permit an owner or tenant to request a meeting with the strata council to discuss matters of concerns.

When a complaint or concern cannot be remedied through informal processes, the parties may utilize the formal dispute resolution processes of:

- arbitration;
- Provincial Court (Small Claims Court); or
- Supreme Court.

[For more information on formal dispute resolution processes please refer to "*Guide 26: Arbitration*" and "*Guide 27: Court Action*".]

4. Requesting a Strata Council Hearing

The Act provides that an owner or tenant may request a hearing at a strata council meeting. A “hearing” means an opportunity to be heard in person.

The Act provides that:

- the owner or tenant must apply for a hearing and state the reason for the request in writing;
- the strata council must hold the hearing within 4 weeks of the request;
- if a decision was requested, the strata council must give the applicant a written decision within one week of the hearing.

5. Requisitioning a Special General Meeting

The following procedures apply when an owner or tenant requisitions a special general meeting of the strata corporation to consider a resolution or other specified matter:

- the owner or tenant must present the strata council with a written demand signed by persons holding at least 20% of the strata corporation’s votes;
- the strata council has four weeks from the date of the request to hold the special general meeting;
- unless all the eligible voters, in writing, waive the need to hold the meeting and consent to the resolution, if the meeting is not held within four weeks, the persons who have signed the demand for the meeting may call and hold the meeting; and
- the resolution or other matter specified in the demand for the meeting must be the first item on the meeting’s agenda.

At the general meeting the resolution or concern specified in the demand for the meeting will be raised and the strata lot owners attending the meeting can be requested to resolve the matter.

Depending on the issue at hand, the strata lot owners could, by majority vote:

- direct or restrict the actions of the strata council, except in the following circumstances:
 - when the direction or restriction is contrary to the Act, Regulations or bylaws;
 - when the direction or restriction interferes with the council’s discretion to determine whether a person has contravened the bylaws, should be fined and the amount of the fine, whether the person should be denied access to a recreational facility, or whether a person should be required to pay the reasonable costs of remedying a contravention of the bylaws or rules; and

- whether an owner should be exempted from a bylaw that prohibits or limits rentals.

Additionally, for resolutions requiring a $\frac{3}{4}$ vote, if the proposed resolution was included with the notice of the meeting, the owners could pass resolutions:

- to designate certain common property as limited common property or to change the use of certain common property;
- cancel the strata management contract;
- any other resolution that would resolve the matter.

The owners are able to use the special general meeting to discuss issues of concern and to resolve the matters as appropriate.

Note: for residential only or bare land stratas, bylaws can be changed only with unanimous consent at an annual or special general meeting held prior to the second AGM.

6. Placing an Item on a General Meeting's Agenda

An owner or tenant who wishes to raise a matter of concern at a general meeting, but does not wish to requisition a special general meeting, may instead propose a resolution or matter to be included at the next annual or special general meeting as follows:

- the owner or tenant must present the strata council with a written demand signed by persons holding at least 20% of the strata corporation's votes;
- the resolution or matter raised in the written demand must be included in the notice of the meeting and appear on the agenda.

7. Voluntary Dispute Resolution

The Standard Bylaws provide a voluntary process for resolving disputes that can be used by a:

- strata lot owner;
- tenant; or
- strata corporation.

A dispute may be referred to a dispute resolution committee if the dispute involves the Act, Regulations, bylaws or rules.

A dispute resolution committee can be made up of:

- one owner or tenant of the strata corporation nominated by each of the disputing parties; and

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- one owner or tenant to chair the committee chosen by the persons who were nominated by the disputing parties; or
- any number of persons consented to, or chosen by a method that is consented to, by all the disputing parties.

To utilize the dispute resolution process one of the parties to the dispute must:

- request that the dispute be referred to a dispute resolution committee;
- obtain the consent of the other party or parties to participate in the process. If the other party or parties do not consent to refer the dispute to a dispute resolution committee, no further steps can be taken in this process.

When a voluntary dispute resolution process exists in the bylaws and is used, the Act provides however that:

- an admission, statement, document or record made only for the purposes of the voluntary dispute resolution process may not be used in court, in an arbitration or in any other proceeding;
- a voluntary dispute resolution process must not:
 - require the person to use the process;
 - confer on a person or body the power to make a binding decision; and
 - affect a person's powers, duties, or rights including the right to sue or arbitrate.

It is the role of the dispute resolution committee to attempt to help disputing parties voluntarily end the dispute.

References:

Sections of the Act: 25, 27, 35, 36, 39-58, 71, 74, 91-110, 114,

119, 124-128, 163-173, 175-189

Sections of the Regulations: 18.1

Sections of Standard Bylaws: 15, 29

Guide 26: Arbitration

1. Parties to an Arbitration

The following parties can refer a dispute to arbitration:

- the strata corporation may refer a dispute with an owner or tenant;
- an owner or tenant may refer a dispute with:
 - the strata corporation; or
 - another owner or tenant.

2. Types of Disputes That May Be Arbitrated

Disputes relating to the following matters may be referred to arbitration for resolution:

- interpretation or application of the Act, Regulations, bylaws or rules;
- the common property or common assets;
- the use or enjoyment of a strata lot;
- money owing, including fines under the Act, Regulations, bylaws, or rules;
- an action or threatened action or decision by the strata corporation including the strata council in relation to an owner or tenant;
- the exercise of voting rights by a person who holds 50% or more of the votes, including proxies at a general meeting.

Disputes may not be referred to arbitration if:

- the arbitration provisions of the Residential Tenancy Act apply to the dispute;
- all parties agree that the Commercial Arbitration Act will apply to the dispute and the arbitration provisions of the Residential Tenancy Act do not apply;
- a court proceeding regarding the dispute has been started.

3. Choosing an Arbitrator

The Act provides the following methods for choosing an arbitrator:

- the parties can agree on an arbitrator by one of the parties:
 - suggesting an arbitrator to which the other party agrees;
 - suggesting the names of a number of arbitrators from which the other party chooses an arbitrator;
 - suggesting a method for appointing an arbitrator to which the other party agrees;

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- if the parties cannot agree on an arbitrator or method for choosing an arbitrator the parties may each choose an arbitrator and the arbitrators will:
 - choose a third arbitrator to act with them and to chair the panel; or
 - name a third person to be the sole arbitrator.

A list of arbitrators may be obtained from:

- the British Columbia Arbitration and Mediation Institute;
- the Better Business Bureau;
- A Strata Owner Association.

[Please see Appendix 1 for a list of organizations and associations.]

If the parties agree on a method for appointing an arbitrator or agree that the two arbitrators will either choose a third arbitrator or name a person to be the sole arbitrator, specific consent of the parties is required before any of the following parties may be appointed as an arbitrator:

- an owner, tenant or occupant in the strata corporation;
- the strata manager of the strata corporation;
- an employee of the strata corporation.

4. **Beginning an Arbitration**

An arbitration is begun by one party giving the other party a “Notice Beginning Arbitration” (Form L) which sets out:

- the details of the dispute;
- the proposed remedy or resolution of the matter;
- one of the following proposals:
 - the name of one arbitrator;
 - the names of a number of arbitrators from which the parties can choose an arbitrator;
 - a method for appointing an arbitrator.

The party receiving the Form L must provide the party beginning the arbitration with a “Notice of Reply” (Form M) within two weeks of receiving the Form L.

The Form M must indicate whether the party:

- agrees with the proposed arbitrator, one of the choices for arbitrator, or the method to appoint the arbitrator; or
- disagrees with the proposals, in which case the party can propose:
 - the name of one arbitrator;

- the names of a number of arbitrators from which the parties can choose an arbitrator;
- a method for appointing an arbitrator.

If the Form M indicates disagreement with the arbitrator proposals contained in the Form L, the party beginning the arbitration must give the other party a “Notice Responding to Reply” (Form N) within one week of receiving the Form M.

The Form N must indicate whether the party who began the arbitration process:

- agrees with the proposed arbitrator, one of the choices for arbitrator, or the method to appoint the arbitrator set out in the Form M; or
- rejects the proposed arbitrator, choice or arbitrators, or method to appoint an arbitrator.

If the Form N rejects the choices provided by the other party, within one week, each party may choose one arbitrator and the two arbitrators will either:

- choose a third arbitrator to act with them and to chair the panel; or
- name a third person to be the sole arbitrator.

5. Failure to Respond or Appoint an Arbitrator

An application can be made to the Supreme Court for an order appointing an arbitrator if:

- the party receiving the form does not respond; or
- the parties are unable to resolve the matter of an arbitrator within six weeks from the date the Form L was given to the other party.

6. Serving Notice of Arbitration on the Strata Corporation

The strata corporation must be served with the forms relating to an arbitration in one of the following ways:

- leaving it with a strata council member;
- mailing it to the strata corporation’s most recent mailing address on file at the Land Title Office;
- faxing it to the strata corporation at the strata corporation’s fax number;
- faxing it to a strata council member if the strata council member has provided the fax number for the purposes of receiving the notice;
- putting it in the mail slot or box used by the strata corporation for receiving notices;]
- emailing it to the strata corporation’s email address or the email address provided by a council member for the purpose of receiving the notice, record or document.

If a form has been served on the strata corporation in any manner other than leaving it with a strata council member, the strata corporation is deemed to have received the form four days after the form was mailed, faxed, or put in the mail slot or box.

7. Serving Notice of Arbitration by the Strata Corporation

The strata corporation can serve forms relating to an arbitration in one of the following ways:

- if the person has provided an address for receiving notices which is outside the strata development by:
 - personally leaving it with the person;
 - mailing it to the address provided by the person.
- if the person has not provided the strata corporation with an address for receiving notices that is outside the strata development by:
 - personally leaving it with the person;
 - leaving it with an adult occupant of the person's strata lot;
 - putting it under the door of the person's strata lot;
 - mailing it to the person at the address of the strata lot;
 - putting it through a mail slot or in a mail box used by the person for receiving mail;
 - faxing to a fax number provided by the person;
 - emailing it to an email address provided by the person.

If a form has been served on a person other than by leaving it with that person, the person is deemed to have received the form four days after the form was mailed, left with an adult at the strata lot, put under the door, or in a mail slot or box, or faxed.

8. Calculating Notice Periods

If notice of an arbitration is served on a strata corporation by emailing, mailing, faxing, or putting it in the mail slot or box, the strata corporation is not considered to have received the notice until four days after the event. For example, if the notice was faxed on Monday, the strata corporation is deemed to have received it on Friday.

Under the Interpretation Act, if the reference to time includes phrases such as "clear" days or weeks, or "at least" in reference to days or weeks, the time must be calculated by excluding the first day and including the last day of the period. Another way of thinking about the days that must be excluded is to think that nothing can happen on those days.

Thus, when calculating the time periods relating to an arbitration, the first day of the time period should not be counted. In other words, the day the notice is given, or is deemed to be received cannot be counted as one of the days.

9. Authorization from Strata Lot Owners for an Arbitration

Before a strata corporation can begin an arbitration in the name of all of the strata lot owners, (except the strata lot owner who is a party to the arbitration)

- the arbitration must be authorized by a resolution approved by a $\frac{3}{4}$ vote;
- the strata lot owner who is a party to the arbitration is not an eligible voter.

A strata corporation can begin an arbitration on behalf of one or more owners about matters affecting only their strata lot if:

- it obtains the written consent of those owners; and
- the arbitration is authorized by a resolution passed by a $\frac{3}{4}$ vote.

10. Notice to Strata Lot Owners of an Arbitration

The strata corporation must notify strata lot owners as soon as feasible once the strata corporation is served with notice of an arbitration.

11. The Arbitration Process

The arbitrator:

- must advise the parties, before the arbitration hearing, of the possibility of a mediated settlement;
- may, before the arbitration hearing, provide notice to a person who is not a party who the arbitrator feels may be directly affected by the issues considered at the arbitration;
- must hold the arbitration hearing as soon as possible at a location in or near the strata corporation's premises;
- may conduct the arbitration hearing in the manner the arbitrator considers appropriate.

The arbitration:

- is open to all owners or tenants, unless all parties to the arbitration agree that the hearing should be held in private;
- may consist of an exchange of written statements or any other procedure, as long as all parties agree.

The parties to an arbitration:

- may be represented at any stage by another person including a lawyer;
- before the arbitration hearing, must submit a written statement to the arbitrator describing the nature of the dispute and the evidence they intend to call.

During the arbitration proceedings:

- each party is allowed to present and rebut evidence;
- each party must, when ordered by the arbitrator, be examined by the arbitrator, and produce all relevant records required by the arbitrator;
- a person, not a party to the dispute, may give evidence only if they are requested to do so by a party to the dispute and are willing to give evidence;
- the arbitrator may require a party or witness to give evidence on oath or affirmation;
- the arbitrator may admit evidence that he or she considers relevant, even if the evidence would not be admissible in a court.

12. Referring Arbitration Matters to Court

A court may hear a dispute that has been referred to arbitration. However, a party to the arbitration may apply to the court for an order staying the court proceedings.

The court may stay its proceeding after considering the following:

- the legal and factual complexity of the dispute;
- the suitability of the intended arbitrator;
- the comparative expense and delay of the court proceedings and the arbitration;
- the interest of any other parties;
- the likelihood that all parties to the arbitration will cooperate to do all things necessary for the proper conduct of the arbitration.

13. Allocation of the Costs of an Arbitration

The parties to an arbitration must pay their own costs and must equally contribute to the fees of the arbitrator unless:

- the parties to the arbitration have entered an agreement with respect to costs; or
- the arbitrator makes an order for costs either:
 - at the time of the decision;
 - as a consequence of a request by one of the parties made within thirty days of being notified of the decision.

If the arbitration proceeded in the name of all strata lot owners:

- all strata lot owners (except the strata lot owner who is a party to the arbitration) must contribute to the expense of the arbitration;
- the strata lot owners must contribute to the expense according to their unit entitlement:
 - unless another method of contributing to the common expenses has been unanimously agreed to;

- except that the unit entitlement of the strata lot owned by the strata lot owner who is a party to the arbitration should not be used in the calculation.

If the arbitration proceeded in the name of only some of the strata lot owners:

- only those strata lot owners on whose behalf the arbitration proceeds must contribute to the expense of the arbitration;
- the owners should contribute to the expenses, based on their unit entitlement:
 - unless another method of contributing to the common expenses has been unanimously agreed to;
 - using only the unit entitlement of the strata lots owned by the strata lot owners in whose name the arbitration proceeded.

The costs of defending an arbitration are shared by all strata lot owners (except the strata lot owner who is a party to the arbitration):

- on the basis of unit entitlement (unless another method of contributing to the common expenses has been unanimously agreed to).

14. **Arbitration Decisions**

The arbitrator may:

- make whatever decision he or she considers just having regard to the Act, Regulations, bylaws and rules;
- order a party to do something;
- order a party to refrain from doing something;
- order a party to pay money as damages.

The arbitrator's decision must:

- be in writing;
- include reasons;
- be signed by the arbitrator.

An arbitrator may vary a decision within four weeks of the date of the decision to correct a clerical, typographical, or similar type of error or omission.

An arbitrator's decision is final and binding except that:

- it may be reviewed under the Judicial Review Procedure Act;
- it may be appealed to the Supreme Court within thirty days of receiving the decision.

All strata lot owners are responsible for a judgment against the strata corporation and must pay the judgment according to their unit entitlement (unless another method of contributing to the common expenses has been unanimously agreed to).

15. Limits on a Strata Lot Owner in Relation to an Arbitration

If the strata corporation initiated an arbitration proceeding against a strata lot owner, or the strata lot owner initiated an arbitration proceeding against the strata corporation, that strata lot owner:

- is not liable to contribute to the legal costs that the strata corporation must pay;
- does not have a right to information or documents relating to the arbitration including legal opinions;
- does not have a right to attend those portions of any general or council meeting at which the arbitration is discussed;
- is not required to contribute to the funds paid to the strata lot owner by the strata corporation in settlement of the matter.

16. Appeals of an Arbitration Decision

A party to an arbitration may appeal the arbitrator's decision to the Supreme Court on any question of law within thirty days after receiving the decision if:

- all parties consent to the appeal; or
- the court grants leave to appeal because:
 - the decision is sufficiently important to justify court intervention, and the determination of the question of law may prevent a miscarriage of justice;
 - the question of law is of importance to some class or body of persons of which the applicant is a member;
 - the question of law is of general or public importance.

17. Enforcement of an Arbitration Decision

An arbitration decision and order for costs may be filed:

- in Supreme Court; or
- in Provincial Court (Small Claims Court) if:
 - the amount claimed or the value of the personal property or services is within the monetary jurisdiction of the court (\$25,000); and
 - the action or decision is in respect of:
 - debt or damages;
 - recovery of personal property;
 - specific performance of an agreement relating to personal property or services;
 - relief from opposing claims to personal property.

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The filing of an arbitration decision and order for costs in either Supreme or Provincial Court:

- has the same effect as an order of that court;
- allows the parties to enforce the decision and take all proceedings as if it was an order of that court.

References:

Sections of the Act: 60, 63, 166, 167, 171, 172, 175-189

Appendix 1: Arbitration and Mediation Referrals

BRITISH COLUMBIA ARBITRATION AND MEDIATION INSTITUTE

203 – 1530 56th Street
Tsawwassen, BC V4L 2A8
Phone: (604) 736-6614
Toll Free in BC: 1-877-332-2264
Fax: (604) 736-6611
Email: info@bcami.com
<http://www.bcami.com>

BETTER BUSINESS BUREAU OFFICES:

Better Business Bureau of Mainland British Columbia

404- 788 Beatty Street
Vancouver, BC V6B 2M1
Phone: (604) 682-2711 (9:00 am - 4:00 pm)
Fax: (604) 681-1544
Email: contactus@mbc.bbb.org WWW: <http://mainlandbc.bbb.org>

Better Business Bureau of Vancouver Island

220 – 1175 Cook Street
Victoria, BC V8V 4A1
Phone: (250) 386-6348
Fax: (250) 386-2367
Email: info@vi.bbb.org WWW: <http://vi.bbb.org>

Better Business Bureau, serving the East Kootenays

350, 7330 Fisher Street SE
Calgary AB T2H 2H8
Phone: (403)531-8780
Fax: (403)640-2514
Email: info@calgary.bbb.org WWW: <http://calgary.bbb.org>

STRATA OWNERS' ASSOCIATIONS:

Condominium Home Owners' Association of B.C. (CHOA)

In the Lower Mainland:

202 – 624 Columbia Street
New Westminster, BC V3M 1A5
Phone: 604-584-2462
Toll Free: 1-877-353-2462
Fax: 604-515-9643

In the Okanagan:

101 – 3115 Skaha Lake Road
Penticton, BC V2A 6G5
Phone: 250-492-3552
Toll Free: 1-877-353-2462
Fax: 250-492-3552

On Vancouver Island:

222 - 1175 Cook Street,
Victoria, BC V8V 4A1
Phone: 250-381-9088
Toll Free: 1-877-353-2462
Fax: 250-381-9088

E-mail: office@choa.bc.ca Web Site: www.choa.bc.ca

Vancouver Island Strata Owners Association (VISOA)

Box 601, 185 – 911 Yates Street
Victoria, BC V8V 4Y9
Toll Free: **1-877-33-VISOA (877-338-4762)**
Phone: 250-920-0222
E-mail: info@visoa.bc.ca or membership@visoa.bc.ca
Web site: www.visoa.bc.ca

Guide 27: Court Actions

1. Parties to a Law Suit

The strata corporation:

- may be sued as a representative of the owners with respect to matters relating to:
 - common property;
 - common assets;
 - bylaws or rules;
 - an act or omission of the strata corporation.
- may be sued by a strata lot owner.

The strata corporation:

- may sue as a representative of all strata lot owners;
- may sue on behalf of one or more owners about matters affecting only their strata lots;
- may sue an owner.

2. Orders of the Supreme Court

An owner or tenant may apply to the Supreme Court for an order preventing or remedying a significantly unfair:

- action or threatened action of the strata corporation or strata council;
- decision of the strata corporation or strata council;
- exercise of voting rights by a person who holds 50% or more of the votes, including proxies at a general meeting.

An owner, tenant, mortgagee of a strata lot or interested party can apply to the Supreme Court for:

- an order that the strata corporation perform its duty under the Act, Regulations, bylaws or rules;
- an order that the strata corporation stop contravening the Act, Regulations, bylaws or rules.

The strata corporation, on behalf of all owners except those being sued may bring an action relating to the following matters:

- the interpretation or application of the Act, Regulations, bylaws or rules;
- the common property or common assets;
- the use or enjoyment of a strata lot;
- money owing, including fines.

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The strata corporation may apply to the Supreme Court for an order that an owner, tenant or other person:

- perform a duty he or she is required to perform under the Act, Regulations, bylaws or rules;
- stop contravening the Act, Regulations, bylaws or rules.

3. Serving Notice of a Suit on the Strata Corporation

Service on the strata corporation of any court proceeding may only occur by:

- personally serving a strata council member; or
- sending the notice by registered mail to the strata corporation at its most recent mailing address on file in the Land Title Office.

4. Authorization from Strata Lot Owners for a Law Suit

Before a strata corporation can begin a lawsuit in the name of all of the strata lot owners, (except the strata lot owner who is being sued) the suit must be authorized by a resolution approved by a $\frac{3}{4}$ vote. For the purpose of this vote a person being sued is not an eligible voter.

A strata corporation is not required to obtain approval of the strata lot owners before proceeding in Small Claims Court if:

- the proceeding is against an owner or other person to collect money owing to the strata corporation including fines; and
- a bylaw has been passed which dispenses with the need for authorization, and the terms and conditions of bylaw have been met.

A strata corporation can begin a lawsuit on behalf of one or more owners about matters affecting only their strata lots if:

- it obtains the written consent of those owners; and
- the arbitration is authorized by a resolution passed by a $\frac{3}{4}$ vote.

5. Costs of the Law Suit

If the law suit proceeded in the name of all strata lot owners:

- all strata lot owners (except the strata lot owner who is being sued) must contribute to the expense of the suit;
- the strata lot owners must contribute to the expense according to their unit entitlement:
 - unless another method of contributing to the common expenses has been unanimously agreed to;
 - except that the unit entitlement of the strata lot owned by the strata lot owner who is a party to the suit should not be used in the calculation.

If the lawsuit proceeded in the name of only some of the strata lot owners:

- only those strata lot owners on whose behalf the suit proceeds must contribute to the expense of the arbitration;
- the owners should contribute to the expenses, based on their unit entitlement:
 - unless another method of contributing to the common expenses has been unanimously agreed to;
 - using only the unit entitlement of the strata lots owned by the strata lot owners in whose name the arbitration proceeded.

6. Judgments Against the Strata Corporation

All strata lot owners are responsible for a judgment against the strata corporation and must pay the judgment according to their unit entitlement (unless another method of contributing to the common expenses has been unanimously agreed to).

7. Limits on a Strata Lot Owner involved in a Law Suit with the Strata Corporation

A strata lot owner who is sued by, is joined in a law suit or has sued the strata corporation:

- is not liable to contribute to the legal costs that the strata corporation must pay;
- does not have a right to information or documents relating to the suit including legal opinions;
- does not have a right to attend those portions of any general or council meeting at which the suit is discussed;
- is not required to contribute to the funds paid to the strata lot owner by the strata corporation in settlement of the matter.

8. Provincial Court (Small Claims Court)

Generally, court actions relating to the interpretation of the Act, and the duties and obligations of various parties in a strata development cannot be brought in Provincial Court. However, the strata corporation may sue an owner or tenant, and may file an arbitrator's decision and order for costs in Provincial Court if:

- the amount claimed or the value of the personal property or services is within the monetary jurisdiction of the court (\$25,000); and
- the action or decision is in respect of:
 - debt or damages;
 - recovery of personal property;
 - specific performance of an agreement relating to personal property or services;
 - relief from opposing claims to personal property.

References:

Sections of the Act: 163-173

Guide 28: Sections

1. What are Sections?

Under Part 11 of the Act, different types of strata lots can be organized into formal groups, which are called sections. The sections represent the interests of the strata lot owners in the section.

Each section will operate independently from other sections in the strata corporation with respect to matters that relate solely to the section.

If a strata corporation has sections, the owners will still elect a strata council to administer functions relating to the strata corporation as a whole.

A strata corporation with sections will therefore have two separate levels of administration:

- one related to the strata corporation as a whole and
- the other related to the different sections alone.

2. The Different Types of Strata Lots that can Form Sections

Only specific types of strata lots can form sections. Strata corporations that contain residential and non-residential strata lots can form into residential and non-residential sections. In addition, non-residential strata lots can form different sections if the strata lots are used for significantly different purposes.

Residential strata lots can only be divided into different residential sections for the following types of strata lots:

- apartment style;
- townhouse style; and
- detached houses.

3. How are Sections Created?

Sections can be created by the Developer when the strata corporation is created, by filing bylaws with the strata plan which create the sections and provide for their administration.

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After a strata corporation has been created, the owners of the strata lots can create sections by following the steps set out below:

- an annual or special general meeting must be held;
- a resolution to amend the bylaws to create and administer each section must be approved by:
 - a $\frac{3}{4}$ vote of the eligible voters in each proposed section, and
 - a $\frac{3}{4}$ vote of the eligible voters in the strata corporation;
- the bylaw amendment must be filed in the Land Title Office; and
- a resolution approved by a $\frac{3}{4}$ vote may be passed which designates limited common property for the exclusive use of all strata lots in the section.

4. How do Sections Operate?

A body called an executive administers the section. The members of the executive are elected by the eligible voters within the section. The executive of a section functions like a strata council and it has the same powers and duties with respect to the section that the strata council has with respect to the strata corporation. The bylaws of a section can provide for an election process for the executive and its powers and duties.

5. The Powers of a Section

With respect to matters relating solely to a section, the section is a corporation and has the same powers as the strata corporation to:

- establish its own operating fund and contingency reserve fund for common expenses of the section including expenses relating to limited common property designated for the exclusive use of all the strata lots in that section;
- prepare a section budget and require section owners to pay strata fees and special levies for expenditures the section authorizes;
- enter contracts in the name of the section;
- sue or arbitrate in the name of the section;
- acquire and dispose of land and other property in the name of or on behalf of the section; and
- enforce bylaws and rules.

The executive of the section may make rules governing the use, safety and condition of:

- limited common property designated for the use of all strata lots in the section; and
- property acquired in the name of the section.

6. The Relationship Between the Strata Corporation and Sections

If strata lots in a strata corporation are divided into sections, the strata corporation still retains its powers and duties with respect to matters relating to the strata corporation as a whole.

However, each section operates independently with regards to matters that relate exclusively to the section.

Both the strata corporation and the sections can hold annual general meetings, pass budgets, and create and enforce bylaws and rules within their area of administration.

7. The Relationship Between Sections and Types

Section 6.4(2) of the Regulations, permits strata corporations to allocate operating expenses within a strata corporation if the expense relates solely to a “type of strata lot” and a bylaw or resolution creating the type of strata lot has been created.

For instance, if a strata corporation contains ten strata lots with gas fireplaces and ten strata lots without gas fireplaces, the gas expense for fireplaces could be allocated to just the ten strata lots with fireplaces. A strata corporation may only allocate expenses to different types of strata lots if it has a bylaw which identifies the separate types within the strata corporation.

The creation of different types of strata lots does not create sections.

- Sections are independent organizations with their own powers and duties; whereas, a type of strata lot is not a separate organization of strata lots; it is only a method of allocating operating expenses to certain strata lots in a strata corporation budget.
- It is therefore not possible for different types of strata lots to have their own operating budget, collect separate contingency reserve contributions or allocate special levies based on type.

The Act does not define what constitutes a type of strata lot. A bylaw identifying types can therefore distinguish strata lots in a variety of ways based on the features of the strata lots.

It is also possible under section 11.2 of the Regulations for a section to pass a bylaw creating types for the purpose of allocating expenses based on the different features of strata lots within the section.

8. Allocating Section Expenses within a Section

Generally, expenses in a strata corporation are shared by all strata lots on the basis of unit entitlement, or some other method that has been unanimously approved.

Within a section, the same general rule applies and expenses that relate solely to the strata lots in a section are shared only by the strata lots in the section.

However, there are exceptions that permit a strata corporation to apportion certain contributions to only some of the strata lots. The same exceptions apply for sections as follows:

Limited Common Property

- If an operating expense relates to limited common property in a section, the contribution for this expense will be apportioned, by unit entitlement or some other method approved by unanimous resolution, only to those strata lots in the section which are entitled to use the limited common property.
- However, while a section's operating expense may be apportioned only to strata lots entitled to use the limited common property, a contribution to the section's contingency reserve fund or a special levy must be shared by all strata lots in the section.

Type

- If an operating expense relates to a type of strata lot in a section and that type of strata lot has been identified in a section bylaw, the contribution for this expense will be apportioned, by unit entitlement or some other method approved by unanimous resolution, only to strata lots of that type specified in the bylaw.
- However, while a section's operating expenses may be apportioned only to strata lots identified by way of type in the section's bylaws, contributions to the section's contingency reserve fund or a special levy must be shared by all strata lots in the section.

Repair and Maintenance of Portions of Strata Lots

Under the Act, Regulations and bylaws, there is a distinction made between: who undertakes the actual repair and maintenance of various parts of the strata development; and who pays for the maintenance and repair costs.

- If a section has created a bylaw that places responsibility on the section for the repair and maintenance of portions of some strata lots in the section, the operating expenses and special levies which relate to the repair and maintenance of those portions of strata lots are apportioned by unit entitlement or some other method

approved by unanimous resolution, only to those strata lots being repaired or maintained.

- However, while a contribution to the section's operating fund or a special levy may be apportioned only to the strata lots that the section is repairing or maintaining, contributions to the section's contingency reserve fund for strata lot expenses must be shared by all strata lots in the section.

For more information on apportioning expenses please refer to "*Guide 11: How to Apportion Expenses*".

9. **Bylaws**

The strata corporation's bylaws apply to a section unless they have been amended by the section. However, only a bylaw that relates solely to a section may be amended by that section. Sections may also create bylaws to govern matters within the section.

Prior to the second annual general meeting, the bylaws may only be amended as follows:

- residential sections may only amend bylaws by unanimous vote; and
- non-residential sections may amend the bylaws by a $\frac{3}{4}$ vote or by a different voting threshold if approved in the bylaws.

After the second annual general meeting a section may amend bylaws as follows:

- residential sections may amend the bylaws by a $\frac{3}{4}$ vote at an annual or special general meeting of the section; and
- non-residential sections may amend the bylaws by a $\frac{3}{4}$ vote or by a different voting threshold if approved in the bylaws, at an annual or special general meeting of the section.

References:

Sections of the Act: 72, 100, 108, 127,
190-198

Sections of the Regulations: 6.4, 11.1-11.3

Guide 29: Parking Spaces and Storage Lockers

1. **WHY OWNERS NEED TO UNDERSTAND THE METHOD OF ALLOCATING USE OF PARKING STALLS AND STORAGE LOCKERS**

Not all parking areas or storage lockers in strata developments are allocated in the same way. The specific rights of owners or tenants to use parking stalls or storage lockers may vary depending on how the use of these areas has been allocated in the development. ***Beginning January 1, 2014, additional disclosures relating to parking and storage lockers will be required in Information Certificates (Form B). [Please see Guide 23: Information Certificates.]***

This guide identifies different methods of allocating the use of parking stalls and storage lockers and explains how each method of allocation may affect owners.

Disclaimer: the guides are periodically reviewed and updated by the Office of Housing and Construction Standards as per the date in the footer below.

*Content that has been updated has been highlighted in **bold italic font** and will remain that way for approximately one year.*

The guides are provided for the reader's convenience; they are not a substitute for professional advice including legal advice.

Please note: the Standard Bylaws can be amended.

2. **THE DIFFERENT PARTS OF A STRATA PLAN**

The three different kinds of areas in a strata plan are: a strata lot or part of a strata lot; limited common property; and common property as defined below. Owners should therefore examine their development's strata plan to determine whether their parking and storage areas are designated as a separate strata lot or part of a strata lot, limited common property or common property.

(a) Strata Lot or Part of the Strata Lot

- The strata lot is owned solely by the owner.
- A building strata lot usually ends at the center of walls, floors and ceilings, but may have different boundaries, if shown on the strata plan.
- A bare land strata lot consists of land, and the boundaries of the land will be shown on the strata plan.
- The strata plan will contain a legend which explains how strata lots are noted on the strata plan.

(b) Limited Common Property (LCP)

- Limited Common Property is common property that has been designated on the strata plan, or on a sketch plan filed at the Land Title Office, for the exclusive use of one or more strata lots.
- Limited Common Property is often designated on the strata plan as "LCP" with a strata lot number after it.

- The strata plan will contain a legend which explains how the limited common property is noted on the strata plan.

(c) Common Property:

- Common Property is the part of a strata plan that is not part of a strata lot.
- Each owner owns a share of the common property, as a tenant in common, which is in proportion to the strata lot's unit entitlement.
- The strata plan will contain a legend which explains how the common property is noted on the strata plan.
- Any areas on a strata plan without any designation are deemed to be common property.

3. ALLOCATION METHODS

An owner may have the ability to use parking and storage areas by one of the following methods of allocation.

(a) Strata Lot or Part of the Strata Lot

Parking and storage areas may be designated on the strata plan as a separate strata lot or part of a strata lot.

Parking and storage areas which are intended for commercial use can be designated as a separate strata lot, in which case, they will have their own strata lot number.

Parking and storage areas which are intended to be used in conjunction with a residential strata lot cannot be a separate strata lot, but can be designated as part of the strata lot and so share the same strata lot number as the residential unit.

A parking or storage area which is designated as part of a strata lot will always be owned by the strata lot owner, and a strata lot owner will transfer ownership of these areas to a purchaser upon the sale of his or her strata lot.

(b) Limited Common Property

Parking and storage areas are often designated on the strata plan as limited common property ("LCP") for the exclusive use of a particular strata lot. An owner who is entitled to the exclusive use of an LCP parking or storage area does not own the area, but he or she will have the exclusive right to use the area.

LCP areas are still common property, which is owned by all of the owners in the strata corporation in proportion to their respective unit entitlements.

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If parking and storage areas are designated on the strata plan as common property and are not limited to the use of a specific strata lot, a strata corporation can create LCP designations of these areas by passing a resolution either by a unanimous vote or a 3/4 vote (see Instruction Guide 18 for a more detailed discussion).

The right to exclusive use of an LCP area attaches to the strata lot and not to the individual owner. Therefore, when an owner sells his or her strata lot, the right to exclusive use of the LCP area will automatically transfer to the new owner of the strata lot.

(c) Common Property

Parking and storage areas may simply be designated on the strata plan as common property. Just like limited common property, common property is owned by all of the owners in a strata corporation in proportion to their respective unit entitlements. However, the use of areas designated as common property can be allocated to owners in three different ways.

(i) A Grant of Exclusive Use

Under section 76 of the Act, the strata corporation may give an owner the exclusive privilege to use parking and storage areas which are designated as common property. This permission or privilege may not be given for a term which exceeds one year and may be subject to conditions.

However, the strata corporation can renew the term of the privilege, alter the conditions, and cancel in the middle of a term by giving reasonable notice to the owner. Permission to exclusively use common property under section 76 is therefore temporary in nature and is not as secure as a right to use common property under an LCP designation or a lease.

An important element of short term exclusive use arrangements is that the ability to use the common property only attaches to the owner and not the strata lot.

Vendors, therefore, cannot contractually assign their permission to use parking stalls or storage lockers to new owners, as with a lease. The new owner must ask the strata corporation for permission to use the area exclusively.

The strata corporation has full discretion to grant the exclusive use of the same or a different parking or storage area, or even to deny the new owner the right to use any parking or storage area.

(II) An Assignment of Rights Under a Lease or License

When a developer creates a strata development, the developer will sometimes grant a lease or license over parking or storage areas to a related company or to itself (a head lease). The developer or related company will then assign its lease or license interest in individual parking or storage areas to purchasers when they buy their strata lot. Usually head leases or licenses of common property are created in developments with large underground parking and storage areas to enable the developer to control which purchasers get which parking and storage areas after the strata plan is filed.

Some head leases or licenses are worded so that the sale of a strata lot to a purchaser automatically triggers an assignment of the individual parking or storage area to the new purchaser. However, if the head lease or license does not contain an automatic assignment, the vendor can contractually assign his or her lease or license in the contract of purchase and sale.

(III) Common Use of Parking Spaces

Sometimes a strata plan will contain a parking area designated as common property that is not allocated to the use of any specific owners. Owners can often use common property parking areas on a first-come first-served basis.

However, there may also be strata corporation bylaws or rules which govern how owners may use the parking area.

References:

Sections of the Act: 59, 66, 68, 71-77, 257, 258

Sections of the Regulations: 13.6