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## STRATA PROPERTY LAW PROJECT—PHASE TWO

# Backgrounder

## Report on Complex Stratas

Date: 19 June 2017

### Introduction

The British Columbia Law Institute began work on the Strata Property Law Project—Phase Two in summer 2013. The phase-two project builds on the consultation and research carried out in phase one of the project. It addresses legislative reform of the *Strata Property Act*. With the goal of promoting the development of the next generation of the act, the project's purpose is to make recommendations in the following seven areas: (1) fundamental changes to a strata; (2) complex stratas; (3) selected governance issues; (4) common property; (5) selected land-title issues; (6) selected insurance issues; (7) leasehold stratas.

The *Report on Complex Stratas* is the second published during the project. It deals with three legal devices for addressing the concerns raised by complex stratas: (1) sections, which allow for the creation of mini strata corporations; (2) types, which allow for the allocation, to specific strata lots, of expenses paid for out of a strata corporation's operating fund; and (3) phases, which allow for the development of strata properties in segments over an extended time.

The report presents the project's final recommendations for reform of the law on complex stratas. These recommendations set out the policy positions that are proposed to guide this area of the law. These policy proposals are illustrated by draft legislation and regulations. The policy proposals and draft legislation and regulations do not have the force of law. The passage of legislation by the Legislative Assembly of British Columbia or the adoption of regulations by the Lieutenant Governor in Council is needed to fully implement the recommendations made in this report.

### Our supporters

The Strata Property Law Project—Phase Two has been made possible by project funding from the Real Estate Foundation of British Columbia, the Notary Foundation of British Columbia, the Ministry of Natural Gas Development and Responsible for Housing for British

Columbia, the Real Estate Council of British Columbia, the Real Estate Institute of British Columbia, Strata Property Agents of British Columbia, the Association of British Columbia Land Surveyors, the Vancouver Island Strata Owners Association, and the Condominium Home Owners Association.

## The Strata Property Law (Phase Two) Project Committee

BCLI is carrying out the Strata Property Law Project—Phase Two with the assistance of a volunteer project committee. The members of the project committee are:

Patrick Williams—chair  
*(Partner, Clark Wilson LLP)*

Veronica Barlee (Jul. 2014–present)  
*(Senior Policy Advisor, Housing Policy Branch, Ministry of Natural Gas Development and Responsible for Housing)*

Larry Buttress (Oct. 2013–Jun. 2016)  
*(Deputy Executive Officer, Real Estate Council of British Columbia)*

Garth Cambrey  
*(Real Estate Institute of British Columbia)*

Tony Gioventu  
*(Executive Director, Condominium Home Owners Association)*

Ian Holt (Oct. 2016–Apr. 2017)  
*(Realtor, Re/Max Real Estate Services)*

Tim Jowett  
*(Senior Manager, E-Business and Deputy Registrar, Land Title and Survey Authority)*

Alex Longson (Jul. 2016–present)  
*(Senior Compliance Officer, Real Estate Council of British Columbia)*

Judith Matheson (Oct. 2013–Oct. 2016)  
*(Realtor, Coldwell Banker Premier Realty)*

Elaine McCormack  
*(Partner, Wilson McCormack Law Group)*

Susan M. Mercer (Sep. 2013–present)  
*(Notary Public)*

Doug Page (Oct. 2013–Jul. 2014)  
*(Director of Legislation, Housing Policy Branch, Ministry of Natural Gas Development and Responsible for Housing)*

David Parkin  
*(Assistant City Surveyor, City of Vancouver)*

Allen Regan  
*(Vice-President, Bayside Property Services Ltd.)*

Garrett Robinson (Apr. 2017–present)  
*(Realtor, Re/Max Crest Realty—Westside)*

Stanley Rule (Oct. 2013–Sep. 2013)  
*(Lawyer, Sabey Rule LLP)*

Sandy Wagner  
*(President of the Board of Directors, Vancouver Island Strata Owners Association)*

Ed Wilson  
*(Partner, Lawson Lundell LLP)*

## Consultation Paper on Complex Stratas

The report was preceded by the committee's *Consultation Paper on Complex Stratas*, which was published in August 2016. The consultation paper was widely available via BCLI's website. It attracted a level of response that is consistent with other recent BCLI consultations featuring proposals for legislative reform. The committee thanks everyone who responded to the consultation paper. Their comments played an important role in the committee's deliberations on the recommendations in this report.

### Content of the report

#### *Introduction*

The report contains seven chapters (including its brief concluding and introductory chapters). The introductory chapter gives an overview of the project and the consultation process. Then it discusses what the committee means by *complex strata*.

*Complex strata* isn't a legal term. It isn't found in the *Strata Property Act* or the *Strata Property Regulation*. Instead, it's a descriptive term that came out of the consultations BCLI held for phase one of the project.

The term is meant to capture two trends in the real-estate sector. One is combining two or more different uses in a single strata property. The resulting mixed-use strata may be used for, for example, a combination of residential, commercial, office, industrial, recreational, or hotel uses. The second involves the construction of larger residential developments, embracing a number of architectural styles and amenities.

These two trends give rise to a host of legal issues. The bulk of the report is concerned with three tools that the act uses to manage these legal issues: sections, types, and phases. But before delving into sections, types, and phases, the report provides a brief review of strata-property law.

#### *Strata-property basics and the cost-sharing problem*

This chapter is meant for readers who are new to strata-property law. It introduces the law's special terms and basic concepts.

The chapter also discusses in general terms the cost-sharing problem, which is at the heart of much of the committee's proposals relating to sections and types. As a general rule, strata-lot owners are "all in it together": that is, they share all common expenses by reference to a formula based on their strata lots' unit entitlements. This general rule can cause problems when a strata property has a number of different uses or different architectural characteristics. In these cases, some owners may benefit exclusively from a good or a service that is still considered a common expense. But according to the general rule all the owners share the expense, even those owners who derive no benefit from it. Sections and types each provide a means to shift the expense onto just those owners who benefit from it.

## Sections

The act allows strata corporations to have sections. Sections are essentially mini strata corporations. The act allows an owner-developer or a strata corporation to create sections only if they represent the different interests of (1) owners of residential strata lots and owners of nonresidential strata lots, (2) owners of nonresidential strata lots, if they use their strata lots for significantly different purposes, or (3) owners of different types of residential strata lots (with *types* meaning here apartment-style strata lots, townhouse-style strata lots, or detached houses). In addition to being part of the strata corporation, strata lots can also belong to sections. Because they have a separate legal status from a strata corporation, sections allow for some enhanced cost sharing and control of property. But this separate legal status also creates some operational and administrative issues, which can pose challenges for owners, strata-council members, and strata-property managers.

The committee made 29 recommendations on sections, addressing issues in the seven areas. Highlights include:

- **General.** The committee recommended that sections remain a part of strata-property law in British Columbia, despite the operational and administrative challenges. To address these issues, the committee recommended specific, incremental reforms to the law governing sections.
- **Qualifying conditions.** The committee recommended retaining the qualifying conditions for creating sections currently found in the act.
- **Creation.** The committee recommended retaining the owner-developer's power to create sections, but it couples this proposal with a recommendation to give a strata corporation a mechanism to cancel those sections at the second annual general meeting.
- **Powers and duties.** The committee recommended spelling out powers and duties implied in the legislation. The committee also recommended enhancing the power of a section to obtain insurance.
- **Governance.** The committee recommended giving sections the express power to issue an Information Certificate (Form B).
- **Finances.** The committee recommended giving sections the express power to file a lien against a strata lot. The committee also recommended clarifying rules on section budgets and finances.
- **Cancellation.** The committee recommended that a resolution to cancel a section must address the legal issues that arise as a consequence of dissolving a mini corporation.

## *Types*

A strata corporation may identify types of strata lots in its bylaws. While the act gives no guidance on how to do this, case law indicates that any principled distinction between types of strata lots will be valid. In practice, types tend to involve different architectural characteristics or different uses.

If a strata corporation's or section's bylaws have identified types, then the strata corporation or section may allocate specific operating expenses to the owners of a type of strata lot who exclusively benefit from the goods or services that generate the expense. Types, like sections, are a means to address the cost-sharing problem. But unlike sections types can't be used to allocate capital expenses. And in a further contrast to sections types aren't considered distinct legal entities. Because types are simpler, with more limited authority, they do not have the same administrative complexities as sections.

The committee made 14 recommendations on types, addressing issues in six areas. Highlights include:

- **Legislative enabling provision or definition.** The committee recommended that the act expressly enable the creation of types.
- **Creation.** The committee recommended establishing a clear procedure to create types, modelled on the procedure the act uses for creating a section.
- **Sharing operating expenses.** The committee recommended retaining the power to allocate operating expenses by type. The committee also recommended requiring a year-end reconciliation of expenses allocated to a type.
- **Sharing capital expenses.** The committee considered but declined to endorse a recommendation to expand the scope of types by allowing them to be used to allocate capital expenses.
- **Powers, duties, and governance.** The committee considered but declined to endorse assigning additional powers to and creating a formal governance structure for types.
- **Cancellation.** The committee recommended creating a legislative procedure to cancel a type, modelled on the procedure the act uses for cancelling a section.

## *Phases*

Unlike sections and types, phases aren't used to address the cost-sharing problem. But, like sections and types, phases do have an economic rationale.

Phasing legislation allows an owner-developer to develop a strata property in segments. The legislation expands the pool of owner-developers who can take on and complete large-scale, sophisticated strata properties. This benefits strata-lot purchasers, who are given increased competition and choice in the marketplace. Strata-lot owners also benefit from economies of scale, which allow for greater amenities in a phased strata property.

Phasing legislation has its downsides. It is extraordinarily complex. It also requires that owner-developers and strata-lot owners have a longer-than-usual relationship with one another, where each party has separate interests. This poses challenges for the ordinary rules of strata-corporation governance and finances.

The committee made 25 recommendations on phases, addressing issues in five areas. Highlights include:

- **General.** The committee recommended retaining the legislative framework for phased strata plans.
- **Applying to deposit a phased strata plan.** The committee recommended retaining the current oversight mechanism for phased strata plans, which involves approval by an approving officer. For cases in which an approving officer has granted approval, the committee recommended extending the duration of this approval from one year to two.
- **Changing circumstances.** The committee recommended fine tuning the approving officer's role in approving changes to a Phased Strata Plan Declaration.
- **Governance and phased strata plans.** The committee recommended simplifying the governance structure for new phases in a phased strata plan.
- **Protecting the financial interests of owners in a phased strata plan.** The committee recommended rolling back the scope of an interim budget that is required after the deposit of a new phase. The committee also recommended strengthening the approving officer's powers to review and approve security arrangements for common facilities.

### *Draft legislation and regulations*

The report also contains draft provisions that are intended to illustrate how the committee's recommendations may be implemented.

These draft provisions come in two forms. First, the committee has provided draft legislative amendments to the *Strata Property Act*. Second, because a number of the committee's recommendations concern the treatment of phases in the *Strata Property Regulation*, the committee has also provided draft regulatory changes. These regulatory changes include a draft of a proposed *Phased Strata Plan (Owner Developer Governance Obligations) Regulation*. This draft regulation comprehensively spells out the obligations applicable to an owner-developer when a phase in a phased strata plan is brought online.

## **Conclusion**

The report's final recommendations will be submitted to the provincial government. The province of British Columbia regularly updates strata legislation.