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RESPONSE BOOKLET

Consultation Paper on Governance Issues for Stratas

Prepared by the
Strata Property Law
(Phase Two) Project
Committee

March 2018

Supported By:



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- the best in scholarly law reform research and writing; and
- the best in outreach relating to law reform.

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Strata Property Law (Phase Two) Project Committee

The Strata Property Law (Phase Two) Project Committee was formed in fall 2013. This volunteer project committee is made up of leading experts in strata-property law and practice in British Columbia. The committee's mandate is to assist BCLI in developing recommendations to reform strata-property law in the seven areas selected for study in this phase-two project. These recommendations will be set out in final reports for each area. The project as a whole will complete in June 2018.

The members of the committee are:

Patrick Williams—chair
(Partner, Clark Wilson LLP)

Veronica Barlee (Jul. 2014–present)
(Senior Policy Advisor, Housing Policy Branch, Ministry of Municipal Affairs and 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
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Susan M. Mercer (Sep. 2016–present)
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Doug Page (Oct. 2013–Jul. 2014)
(Director of Legislation, Housing Policy Branch, Ministry of Municipal Affairs and Housing)

David Parkin
(Assistant City Surveyor, City of Vancouver)

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

Stanley Rule (Oct. 2013–Sep. 2016)
(Lawyer, Sabey Rule LLP)

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

Ed Wilson
(Partner, Lawson Lundell LLP)

Kevin Zakreski (staff lawyer, British Columbia Law Institute) is the project manager.

**For more information, visit us on the World Wide Web at:
<https://www.bcli.org/project/strata-property-law-phase-two>**

Call for Responses

We are interested in your response to this consultation paper. It would be helpful if your response directly addressed the tentative recommendations set out in this consultation paper, but it is not necessary. General comments on reform of strata-corporation governance are also welcome.

The best way to submit a response is to use a response booklet. You may obtain a response booklet by contacting the British Columbia Law Institute or by downloading one at <https://www.bcli.org/project/strata-property-law-phase-two>. You do not have to use a response booklet to provide us with your response.

Responses may be sent to us in one of four ways—

- by mail: British Columbia Law Institute
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Attention: Kevin Zakreski
- by fax: (604) 822-0144
- by email: strata@bcli.org
- by online survey: link from www.bcli.org/project/strata-property-law-phase-two

If you want your response to be considered by us as we prepare our report on governance issues for stratas, then we must receive it by **15 June 2018**.

RESPONSE

Name: _____

Organization: _____

Position: _____

You may provide us with your name, the name of any organization you represent, and the title of your position within that organization, if you wish. You do not have to give us any of this information. You may still submit your response even if you leave some or all of the above spaces blank. You may respond to all or some of the tentative recommendations in this response booklet. If you wish to provide a more extensive comment than space permits, then please use the additional pages at the end of this response booklet.

Your response will be used in connection with the Strata Property Law (Phase Two) Project. It may also be used as part of future law-reform work by the British Columbia Law Institute or its internal divisions. All responses will be treated as public documents, unless you expressly state in the body of your response that it is confidential. Respondents may be identified by name in the final report for the project, unless they expressly advise us to keep their name confidential. Any personal information that you send to us as part of your response will be dealt with in accordance with our privacy policy. Copies of our privacy policy may be downloaded from our website at: <<https://www.bcli.org/privacy>>.

The numbers in parentheses refer to pages in the consultation paper where the tentative recommendation is discussed.

Bylaws and rules—relocating provisions from the standard bylaws to the act

1. Section 1 of the Schedule of Standard Bylaws should remain a part of the standard bylaws and should be amended to read as follows:

Payment of strata fees and special levies

- 1 (1) *An owner must pay strata fees on or before the first day of the month to which the strata fees relate.*
- (2) *An owner must pay a special levy as approved by the strata corporation. (30-31)*

Agree

Disagree

Comments: _____

2. Section 2 of the Schedule of Standard Bylaws should remain a part of the standard bylaws. (31-32)

Agree

Disagree

Comments: _____

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3. Section 3 (1) of the Schedule of Standard Bylaws should be relocated to part 5 of the Strata Property Act. (32-33)

Agree

Disagree

Comments: _____

4. Section 3 (2)-(4) of the Schedule of Standard Bylaws should remain a part of the standard bylaws. (32-33)

Agree

Disagree

Comments: _____

5. Section 4 (1) of the Schedule of Standard Bylaws should be relocated to the Strata Property Act. (33-34)

Agree

Disagree

Comments: _____

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6. Upon relocation of section 4 (1) of the Schedule of Standard Bylaws to the Strata Property Act the provision should be amended to require that within two weeks of becoming an owner's representative with respect to the strata lot, as defined in the regulations, an owner's representative must inform the strata corporation of the owner's representative's name, strata-lot number, and mailing address outside the strata plan, if any. **(33-34)**

Agree

Disagree

Comments: _____

7. Section 4 (2) of the Schedule of Standard Bylaws should be repealed. **(33-34)**

Agree

Disagree

Comments: _____

8. Section 5 (1) and (2) of the Schedule of Standard Bylaws should be relocated to the Strata Property Act. **(35)**

Agree

Disagree

Comments: _____

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9. *Section 5 (3) of the Schedule of Standard Bylaws should be repealed.* **(35)**

Agree

Disagree

Comments: _____

10. *Section 6 of the Schedule of Standard Bylaws should be relocated to the Strata Property Act.* **(36)**

Agree

Disagree

Comments: _____

11. *Section 7 of the Schedule of Standard Bylaws should be relocated to the Strata Property Act.* **(36-37)**

Agree

Disagree

Comments: _____

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12. Section 8 of the Schedule of Standard Bylaws should be relocated to become new section 72 (3) of the Strata Property Act. **(37-38)**

Agree

Disagree

Comments: _____

13. When section 8 of the Schedule of Standard Bylaws is relocated to become new section 72 (3) of the Strata Property Act, "patios" should be added to the list of limited common property that the strata corporation has the duty to repair and maintain no matter how often the repair or maintenance ordinarily occurs. **(37-38)**

Agree

Disagree

Comments: _____

14. Existing section 72 (3) of the Strata Property Act should be renumbered as subsection (4) and should apply despite new subsection (3) (previously section 8 of the Schedule of Standard Bylaws). **(37-38)**

Agree

Disagree

Comments: _____

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15. With the exception of sections 19, 20 (4), and 22, all of division 3 of the Schedule of Standard Bylaws should remain a part of the standard bylaws. (39-40)

Agree

Disagree

Comments: _____

16. Section 19 of the Schedule of Standard Bylaws should be relocated to the Strata Property Act and revised to read "The strata corporation must circulate minutes of strata-council meetings within three weeks of the meeting, whether or not the minutes have been approved." (40)

Agree

Disagree

Comments: _____

17. Section 20 (4) of the Schedule of Standard Bylaws should be relocated to the Strata Property Act. (41)

Agree

Disagree

Comments: _____

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18. *Section 22 of the Schedule of Standard Bylaws should be relocated to become part of section 31 of the Strata Property Act. (41-42)*

Agree

Disagree

Comments: _____

19. *Section 23 of the Schedule of Standard Bylaws should remain a part of the standard bylaws. (42)*

Agree

Disagree

Comments: _____

20. *Section 24 of the Schedule of Standard Bylaws should be relocated to form part of section 132 of the Strata Property Act and section 7.1 (3) of the Strata Property Regulation should be repealed. ()*

Agree

Disagree

Comments: _____

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21. Section 25 of the Schedule of Standard Bylaws should remain a part of the standard bylaws. **(44)**

Agree

Disagree

Comments: _____

22. Section 26 of the Schedule of Standard Bylaws should remain a part of the standard bylaws. **(44–45)**

Agree

Disagree

Comments: _____

23. Section 27 of the Schedule of Standard Bylaws should be relocated to the Strata Property Act. **(45)**

Agree

Disagree

Comments: _____

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24. *Section 28 of the Schedule of Standard Bylaws should remain a part of the standard bylaws. (46)*

Agree

Disagree

Comments: _____

25. *Section 29 of the Schedule of Standard Bylaws should be repealed. (46-47)*

Agree

Disagree

Comments: _____

26. *Section 30 of the Schedule of Standard Bylaws should remain a part of the standard bylaws. (47-48)*

Agree

Disagree

Comments: _____

27. The following should be adopted as a new standard bylaw: “The authority required in section 171 (2) of the act is not required for a proceeding under the Small Claims Act against an owner or other person to collect money owing to the strata corporation, including money owing as a fine.” **(48–49)**

Agree

Disagree

Comments: _____

Bylaws and rules—enforcement: expanding the lien

28. The Strata Property Act should continue not to enable a strata corporation to register a lien on an owner’s strata lot for amounts owing with respect to fines. **(49–51)**

Agree

Disagree

Comments: _____

29. The Strata Property Act should not enable a strata corporation to register a lien on an owner’s strata lot for amounts owing with respect a fine, even if the fine has been found valid by a court or the Civil Resolution Tribunal. **(51–52)**

Agree

Disagree

Comments: _____

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30. The Strata Property Act should continue not to enable a strata corporation to register a lien on an owner's strata lot for amounts owing with respect to an insurance deductible or expenses incurred due to damage which are less than an insurance deductible. (52-53)

Agree

Disagree

Comments: _____

31. The Strata Property Act should not enable a strata corporation to register a lien on an owner's strata lot for amounts owing with respect to a charge back for an insurance deductible or expenses incurred due to damage which are less than an insurance deductible, even if the charge back has been found valid by a court or the Civil Resolution Tribunal. (53-54)

Agree

Disagree

Comments: _____

Bylaws and rules—other enforcement tools

32. The Strata Property Act should not be amended to add either a provision requiring compliance with a strata corporation's bylaws and rules (which would give the court a wide range of discretionary remedies that may be ordered in cases of non-compliance) or a provision that creates an offence of non-compliance with a strata corporation's bylaws and rules. (54–58)

Agree

Disagree

Comments: _____

33. The Strata Property Act should not make failure to pay strata fees subject to an immediate fine without the need to comply with the procedures set out in section 135. (58–60)

Agree

Disagree

Comments: _____

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34. *The Strata Property Act should continue to allow a strata corporation both to apply a fine and to charge interest if a strata-lot owner fails to pay strata fees. (60-61)*

Agree

Disagree

Comments: _____

35. *Section 53 (2) of the Strata Property Act should be amended to read “Despite subsection (1), the vote for a strata lot may not be exercised, except on matters requiring an 80% vote or unanimous vote, if the strata corporation is entitled to register a lien against that strata lot under section 116 (1).” (61-63)*

Agree

Disagree

Comments: _____

36. *Section 121 of the Strata Property Act should be amended to provide that a bylaw is not enforceable to the extent that it reassigns money intended for the purposes of (a) strata fees, (b) a special levy, (c) a reimbursement of the cost of work referred to in section 85, or (d) the strata lot’s share of a judgment against the strata corporation. (63-65)*

Agree

Disagree

Comments: _____

37. *The Strata Property Act should continue to be silent on whether a strata corporation may fine an owner for failure to pay a special levy. (66–68)*

Agree

Disagree

Comments: _____

Bylaws and rules—other issues

38. *The Strata Property Act should be amended to provide that, when a strata corporation amends a bylaw that restricts the rental of strata lots, then (a) in the case of a strata lot that was validly rented under the rental-restriction bylaw that existed immediately prior to the amendment, the new rental-restriction bylaw does not apply to the strata lot 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, and one year after the bylaw is passed; and (b) in the case of any other strata lot, the new rental-restriction bylaw applies upon the bylaw taking effect in accordance with the act. (68–72)*

Agree

Disagree

Comments: _____

Statutory definitions

39. *The Strata Property Act should define “continuing contravention” to mean “a succession or repetition of separate acts of the same character.” (74–77)*

Agree

Disagree

Comments: _____

40. *The Strata Property Act should not be amended to add a definition of “strata manager.” (77–79)*

Agree

Disagree

Comments: _____

41. *The Strata Property Act should be amended to define “rent” as “means to pay monetary consideration or other value to occupy a strata lot.” (79–82)*

Agree

Disagree

Comments: _____

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42. *The Strata Property Act's definition of "residential strata lot" should not be amended.* (83-87)

Agree

Disagree

Comments: _____

43. *The Strata Property Act should not contain a definition of "nonresidential strata lot."* (87-89)

Agree

Disagree

Comments: _____

General meetings and strata-council meeting—proxies

44. *The Strata Property Act should require the appointment of a proxy to be made using a standard form with the following features: (a) a warning that the strata corporation has no obligation to ensure that the proxy votes in accordance with any instructions set out in this proxy appointment; (b) a space to record either the grantor's strata-lot number or unit number and street address; (c) check boxes to indicate whether the proxy appointment is a general appointment or an appointment for a specific meeting; (d) a space to record the date on which the proxy appointment is signed; (e) a signature block; (f) a space to record any voting instructions, labelled "optional."* **(98-102)**

Agree

Disagree

Comments: _____

45. *Section 56 (2) of the Strata Property Act should be amended to provide that (a) a document appointing a proxy must be in the prescribed form, and (b) a document appointing a proxy that is not in the prescribed form is invalid.* **(102-04)**

Agree

Disagree

Comments: _____

46. *The Strata Property Act should not limit the number of proxy appointments that may be held for a general meeting. (104-08)*

Agree

Disagree

Comments: _____

47. *Section 56 (3) of the Strata Property Act should be amended to provide that the following persons may not be proxies for an eligible voter who is not an owner-developer: (a) an employee or agent of the strata corporation; (b) an owner-developer or an employee or agent of the owner-developer or a person who does not deal with the owner-developer at arm's length; (c) a person who provides strata-management services to the strata corporation or that person's employee or agent. (108-11)*

Agree

Disagree

Comments: _____

General meetings and strata-council meeting—conduct of meetings

48. *The Strata Property Act should not prescribe a comprehensive set of rules of order for strata-corporation general meetings. (113–15)*

Agree

Disagree

Comments: _____

49. *The Strata Property Act should not be amended to address who may act as chair of an annual general meeting or a special general meeting. (116–17)*

Agree

Disagree

Comments: _____

General meetings and strata-council meeting—quorum

50. Section 48 (3) of the Strata Property Act should be amended by striking out the words “the meeting stands adjourned to the same day in the next week at the same place and time but, if on the day to which the meeting is adjourned a quorum described in subsection (2) is not present within 1/2 hour from the time appointed for the meeting.” (118-20)

Agree

Disagree

Comments: _____

51. Section 48 of the Strata Property Act should be amended by adding a new subsection that reads “Subsection (3) does not apply to a special meeting called by voters under section 43.” (118-21)

Agree

Disagree

Comments: _____

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52. *The Strata Property Act should provide that if a quorum is present at the opening of an annual general meeting or a special general meeting, the eligible voters present may, unless the bylaws otherwise provide, proceed with the business of the meeting, even if a quorum is not present throughout the meeting. (121-23)*

Agree

Disagree

Comments: _____

53. *The Strata Property Act should provide that a strata-council member who has a direct or indirect interest in (a) a contract or transaction with the strata corporation, or (b) a matter that is or is to be the subject of consideration by the council, if that interest could result in the creation of a duty or interest that materially conflicts with that council member's duty or interest as a council member, and who is present at a council meeting in which the contract, transaction, or matter is considered for approval may be counted in the quorum at the meeting even if the council member leaves the council meeting while the contract, transaction, or matter is discussed and while the council votes on the contract, transaction, or matter. (123-24)*

Agree

Disagree

Comments: _____

General meetings and strata-council meeting—voting

54. Section 18 (1) of the Schedule of Standard Bylaws should be amended by adding “and who have not abstained from voting” after “majority of council members present in person at the meeting.” (126–27)

Agree

Disagree

Comments: _____

55. The Strata Property Act should not allow any person who is chair of an annual general meeting or a special general meeting to break a tie on a resolution at the general meeting by casting a second, deciding vote, but should continue to allow a president (or, if the president is absent or unable or unwilling to vote, the vice president) to break a tie vote at a strata-council meeting by casting a second, deciding vote. (127–30)

Agree

Disagree

Comments: _____

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56. *The Strata Property Act should not change the voting threshold for all resolutions requiring passage by a 3/4 vote. (130-33)*

Agree

Disagree

Comments: _____

57. *Section 27 of the Schedule of Standard Bylaws should be amended by striking out the word "secret" wherever it appears and replacing it with the word "written." (134-36)*

Agree

Disagree

Comments: _____

58. *Section 27 of the Schedule of Standard Bylaws should be amended to provide that a strata corporation is only required to hold a vote by written ballot if it is authorized to do so by a resolution passed by a majority vote, unless the vote is an election to the strata council. (136-37)*

Agree

Disagree

Comments: _____

General meetings and strata-council meeting—strata-council elections

59. *The Strata Property Act should require that each strata-council member must be elected by a majority of the ballots cast. (138-40)*

Agree

Disagree

Comments: _____

60. *The Strata Property Act should not be amended to address the number of members that must be elected to council. (140-41)*

Agree

Disagree

Comments: _____

Response Booklet for Consultation Paper on Governance Issues for Stratas

61. *The Strata Property Act should require that a strata-council member (a) must be an individual who is at least 18 years of age, and (b) despite item (a), an individual is not qualified to be a strata-council member if the individual is (i) found by any court, in Canada or elsewhere, to be incapable of managing the individual's own affairs, (ii) an undischarged bankrupt, or (iii) convicted in or out of British Columbia of an offence in connection with the promotion, formation, or management of a corporation or unincorporated entity, or of an offence involving fraud. (141-45)*

Agree

Disagree

Comments: _____

62. *The Strata Property Act should provide that additional strata-council members may be elected at a special general meeting. (145-46)*

Agree

Disagree

Comments: _____

General meetings and strata-council meeting—agenda and meeting minutes

63. Section 28 of the Schedule of Standard Bylaws should be amended so that the agenda at an annual general meeting or a special general meeting is as follows: (a) register eligible voters and issue voting cards; (b) call the meeting to order; (c) elect a person to chair the meeting, if necessary; (d) certify proxies; (e) determine that there is a quorum; (f) present proof of notice of meeting; (g) approve the order of the agenda; (h) approve the minutes of the most recent general meeting or waiver of notice of meeting; (i) deal with any unfinished business; (j) if the meeting is an annual general meeting, receive reports of council activities and decisions since the previous annual general meeting; (k) ratify any new rules made by the strata corporation under section 125 of the act, including any new user fees; (l) if the meeting is an annual general meeting, report on insurance coverage in accordance with section 154 of the act, including the certificate of insurance prepared by the insurance brokerage and the date of the most recent appraisal; (m) if the meeting is an annual general meeting, approve the budget for the coming year in accordance with section 103 of the act; (n) deal with matters under section 46 of the act or about which notice has been given under section 45 of the act; (o) if the meeting is an annual general meeting, elect a council; (p) if the meeting is a special general meeting, elect a council member if necessary; (q) terminate the meeting. **(147–48)**

Agree

Disagree

Comments: _____

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64. *The Strata Property Act should require circulation of minutes of a general meeting within three weeks of the meeting, whether or not the minutes have been approved.* **(149-50)**

Agree

Disagree

Comments: _____

65. *Section 106 of the Strata Property Act, which deals with informing owners of changes to strata fees, should be amended by striking out “2 weeks following the annual or special general meeting at which a budget is passed” and replacing it with “3 weeks following the annual or special general meeting at which a budget is passed.”* **(150-51)**

Agree

Disagree

Comments: _____

Finances—operating fund

66. *The Strata Property Act should not be amended to change the purpose of and criteria for using funds in a strata corporation's operating fund. (155–60)*

Agree

Disagree

Comments: _____

Finances—special levies

67. *The Strata Property Act should require, if the money collected on a special levy exceeds the amount required, or for any other reason is not fully used for the purpose set out in the resolution, the strata corporation to pay to each owner of a strata lot the portion of the unused amount of the special levy that is proportional to the contribution made to the special levy in respect of that strata lot, unless no owner would be entitled to receive more than an amount prescribed by regulation (which should initially be set at \$500) in total, in which case the strata corporation may deposit the excess in its contingency reserve fund. (161–63)*

Agree

Disagree

Comments: _____

Finances—budgets

68. *The Strata Property Act should continue to require strata corporations to initiate the budget-approval process only at an annual general meeting. (163–65)*

Agree

Disagree

Comments: _____

69. *The Strata Property Act should not be amended to permit budgets to be amended at a special general meeting. (163–65)*

Agree

Disagree

Comments: _____

Finances—financial statements

70. *The Strata Property Regulation should not contain a prescribed form for strata-corporation financial statements. (166–68)*

Agree

Disagree

Comments: _____

Finances—contracts

71. The Strata Property Act should not be amended to provide any new enhanced termination power to strata corporation for contracts it enters into before its first annual general meeting. (170–72)

Agree

Disagree

Comments: _____

72. The Strata Property Act should provide that a strata corporation must act on a resolution authorizing the cancellation of a strata-management contract and provide notice of the cancellation within 90 days. (173–74)

Agree

Disagree

Comments: _____

Finances—regulatory provisions on fines and fees

73. *The Strata Property Regulation should be amended to set the maximum fines at: (a) \$200 for each contravention of a bylaw; (b) \$50 for each contravention of a rule; and (c) \$2000 for each contravention of a rental-restriction bylaw. (175–76)*

Agree

Disagree

Comments: _____

74. *The Strata Property Regulation should provide for a new maximum fine to be set at \$2000 for each contravention of a short-term accommodation bylaw. (176–77)*

Agree

Disagree

Comments: _____

75. *The Strata Property Regulation should be amended (a) to raise the maximum fee a strata corporation may charge for an Information Certificate to \$300 plus the cost of photocopying, or other means of reproduction, up to 25 cents per page and (b) to raise the maximum fee for a Certificate of Payment to \$50. (178)*

Agree

Disagree

Comments: _____

Response Booklet for Consultation Paper on Governance Issues for Stratas

76. *The Strata Property Regulation should continue to provide that a strata corporation may not charge a fee for the inspection of a record or document under section 36 of the Strata Property Act. (179-80)*

Agree

Disagree

Comments: _____

77. *The Strata Property Regulation should not allow a strata corporation to charge a fee for an inspection of a record or document under section 36 of the Strata Property Act by electronic means. (181-82)*

Agree

Disagree

Comments: _____

78. *The Strata Property Regulation should allow a strata corporation to charge a fee of up to \$0.25 per page for copy of a record or document provided under section 36 of the Strata Property Act by electronic means. (181-82)*

Agree

Disagree

Comments: _____

Finances—limitation period and collections

79. *The Strata Property Act should provide for a special limitation period for claims of money, capable of being subject to a lien under section 116, owing from a strata-lot owner to a strata corporation, of four years. (184–86)*

Agree

Disagree

Comments: _____

Notices and communications

80. *Section 65 of the Strata Property Act should not be amended. (192–94)*

Agree

Disagree

Comments: _____

81. *Section 34.1 (3) of the Strata Property Act should be amended by striking out “one week” and replacing it with “two weeks.” (192–94)*

Agree

Disagree

Comments: _____

Response Booklet for Consultation Paper on Governance Issues for Stratas

82. Section 144 (4) (a) (i) of the Strata Property Act should be amended by striking out “one week” and replacing it with “two weeks.” (194-95)

Agree

Disagree

Comments: _____

83. Section 144 (4) (a) (ii) of the Strata Property Act should be amended by striking out “two weeks” and replacing it with “three weeks.” (194-95)

Agree

Disagree

Comments: _____

PRINCIPAL FUNDERS IN 2017

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- Association of British Columbia Land Surveyors
- Vancouver Island Strata Owners Association
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- Ministry of Municipal Affairs and Housing for British Columbia
- Employment and Social Development Canada
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