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STRATA PROPERTY LAW PROJECT—PHASE TWO

Backgrounder

Report on Governance Issues for Stratas

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Introduction

The *Report on Governance Issues for Stratas* is the third report published in BCLI's Strata Property Law Project—Phase Two. 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. Previous reports have considered terminating a strata and complex stratas.

This report examines selected governance issues. These are issues concerning the method or system of a strata corporation's management. The hallmark of governance is effective decision-making. Strata-corporation governance entails coordinating a diverse range of individual strata-lot owners to make effective decisions on matters of common concern. This report's focus is on how the *Strata Property Act* and the *Strata Property Regulation* enable that process through provisions on bylaws and rules, statutory definitions, general meetings and strata-council meetings, finances, and notices and communications.

The report contains 81 recommendations for reform of the *Strata Property Act* (including the Schedule of Standard Bylaws) and the *Strata Property Regulation*. These recommendations represent the policy positions that are proposed to guide development of strata-corporation governance. They show that the law needs some significant fine-tuning and improvement but not radical change. The report includes draft legislation and regulations as an illustration of how the recommendations could be implemented. But the report's recommendations, draft legislation, and draft regulations don't 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 this report's recommendations.

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Our supporters and the project committee

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BCLI is carrying out the Strata Property Law Project—Phase Two with the assistance of a volunteer project committee. The committee is made up of a diverse range of experts in the strata-property field. Its 13 current members hail from the legal and notarial professions, owners' organizations, the strata-management and real-estate professions, and the public sector.

Consultation Paper on Governance Issues for Stratas

This report was preceded by the committee's *Consultation Paper on Governance Issues for Stratas*, which was published in March 2018. The consultation paper was made available via the BCLI website. It attracted one of the highest levels of response for a BCLI law-reform consultation. Both the volume of responses and the quality of the comments helped the project committee in refining its proposals and deciding on the final recommendations contained in this report.

Content of the report

Overview

The report contains nine chapters. The introductory chapter gives an overview of the project and the consultation process. The second chapter provides a summary of the building blocks of strata governance. The report ends with a chapter setting out draft legislation and draft regulations and a brief concluding chapter.

The central five chapters form the bulk of the report. They each tackle the broad areas of the law that have generated issues for reform. Since strata governance is a vast topic, one of the first decisions taken by the committee was to identify a range of areas that contained the issues most in need of consideration by a law-reform body. In the committee's view, these areas are:

- bylaws and rules;
- statutory definitions;
- general meetings and strata-council meetings;
- finances; and
- notices and communications.

Each of these areas forms the subject of a dedicated chapter.

Bylaws and rules

This is the report's longest chapter, containing 38 recommendations for reform. The chapter opens with a brief discussion of the current law on bylaws and rules. Then it moves into a consideration of each of the sections currently found in the Schedule of Standard Bylaws to the *Strata Property Act*. The goal of this review is to consider whether any of the bylaws should be relocated from the schedule to the main body of the act. The effect of such a move is that it would place the text of the (former) bylaw beyond the reach of amendment by the strata corporation. In the committee's view, 12 standard bylaws (or parts of a standard bylaw) should be given this treatment.

The remainder of this chapter examines the tools strata corporations have under the act to enforce their bylaws. The committee considers—but ultimately doesn't recommend—expanding the reach of the strata corporation's lien to encompass defaults in the payment of fines. The committee does recommend that the lien be expanded to embrace 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, if the charge back has been found valid by a court, an arbitrator, or the Civil Resolution Tribunal. The committee also looks at and doesn't endorse the creation of a new statutory penalty or offence provision applicable to a contravention of a bylaw or rule. Finally, the committee does recommend a new statutory provision aimed at bylaws that adopt the rule in *Clayton's Case* to reassign money intended for the purposes of strata fees, special levies, reimbursement of the cost of work done under a failure to comply with a work order, or a strata lot's share of a judgment.

Statutory definitions

This short chapter examines the addition of specific statutory definitions to the *Strata Property Act*, as a way to clarify important concepts or to aid a strata corporation in the administration of its obligations under the act. In the committee's view, the terms *continuing contravention* and *rent* should be defined in the legislation. The committee also considered, but didn't recommend, proposed definitions of *strata manager*, *residential strata lot*, and *nonresidential strata lot*.

General meetings and strata-council meetings

The chapter on general meetings and strata-council meetings is another lengthy chapter, containing 20 recommendations. It focuses on the following subjects:

- proxies;
- conduct of meetings;
- quorum;
- voting;

- strata-council elections; and
- agenda and meeting minutes.

The committee invested a considerable amount of time on proxies, which have proved to be a fraught issue in strata-corporation governance. On this topic, the committee recommends that a mandatory, standard form of proxy appointment come into use in British Columbia. The committee also gives extended consideration to limiting the number of proxy appointments that one person may hold for a general meeting, ultimately deciding not to recommend a limit.

The chapter also contains recommendations clarifying that election to the strata council entails commanding a majority of the ballots cast, setting out that quorum for a general meeting must only be present at the start of the meeting, establishing statutory qualifications for council members modelled on the provisions of the new *Societies Act*, and clarifying the order of agenda items for annual and special general meetings.

Finances

While this chapter doesn't present a comprehensive survey of all the financial issues that affect a strata corporation, it does examine some fundamental issues and make 12 recommendations concerning them. The committee largely confirms that the existing framework for a strata corporation's operating fund, budgets, and financial statements should remain as is. The committee does recommend updating a number of regulatory provisions concerning the maximum amounts of fines and fees.

The chapter concludes with an examination of a pressing issue for collection of money owing to the strata corporation—the application of a two-year limitation period to strata-corporation claims. The committee recommends creating a special limitation period for claims that may be the subject of the strata corporation's lien under section 116 of the act, which would be set at four years.

Notices and communications

This brief chapter examines a handful of anomalous notice provisions and periods and recommends some updates in light of practice issues.

Conclusion

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