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BRITISH COLUMBIA  
LAW INSTITUTE

STRATA PROPERTY LAW PROJECT—PHASE TWO

## Backgrounder

### Legislative Fact Sheet:

## Report on Governance Issues for Stratas

Date: 22 January 2019

### Introduction

BCLI's third report in the Strata Property Law Project—Phase Two, the *Report on Governance Issues for Stratas*, recommends reforms to the *Strata Property Act* and the *Strata Property Regulation* and contains draft legislation and regulations illustrating those reforms. The report's recommendations address five topics relating to strata-corporation governance: (1) bylaws and rules; (2) statutory definitions; (3) general meetings and strata-council meetings; (4) finances; and (5) notices and communications. This backgrounder summarizes the content and rationale for the report's recommended reforms that call on the Legislative Assembly of British Columbia to enact legislation or on the executive council to adopt new regulations.

### Bylaws and rules

*What changes does the report recommend?*

- Twelve bylaws or parts of bylaws currently found in the Schedule of Standard Bylaws should be relocated from the schedule to the main body of the act.
- A new standard bylaw should be created, authorizing a strata corporation to proceed under the *Small Claims Act* to collect money owing to the strata corporation.
- The strata corporation's statutory lien should be extended to cover cases in which an amount owing for an insurance deductible or expenses incurred due to damages that are less than an insurance deductible have been charged back to a responsible strata-lot owner and the charge back has been found valid by a court, an arbitrator, or the Civil Resolution Tribunal.
- Cases in which the vote for a strata lot may not be exercised should be limited only to those in which a strata corporation has already registered a lien against the strata-

supported by



ta lot and the vote isn't on a matter requiring approval by either an 80-percent vote or a unanimous vote.

- Bylaws that rely on the rule in *Clayton's Case* to reassign money intended to pay strata fees, a special levy, a reimbursement of the cost of work to remedy an owner's failure to comply with a work order, or a strata lot's share of a judgment against a strata corporation, should be declared to be unenforceable.
- The act's delaying provisions for rental restrictions should not apply when the strata corporation is amending bylaws that already contain rental restrictions.

### *Why should the legislature or the executive implement these recommendations?*

- Relocating standard bylaws from the schedule to the main body of the act places them beyond the reach of strata corporations to amend. The report's recommendations will reset the balance between certainty and flexibility. Bylaws that deal with topics such as the scope of the duty to repair and maintain property will become statutory provisions and will thereby give greater certainty and clarity.
- Adding a new standard bylaw authorizing proceedings under the *Small Claims Act* will streamline the collections process for strata corporations.
- Extending the strata corporation's lien will address a point of contention between strata corporations and strata-lot owners over responsibility for an insurance deductible. It will also support other proposed reforms to the act's legal framework for insurance, which are currently being contemplated for the next report in the project (a report that will focus on insurance issues and stratas).
- Requiring the existence of a registered lien before a strata lot's voting rights are suspended will standardize and clarify a process that currently suffers from uncertainties and confusion. It will also increase protection of voting rights.
- Making it clear that bylaws based on the rule in *Clayton's case* are unenforceable will protect strata-lot owners who are in disputes with the strata corporation. It will also support reasonable expectations about payments to the strata corporation.
- Fine-tuning the act's delaying provisions for rental-restriction bylaws will clarify a point of confusion in practice.

## **Statutory definitions**

### *What changes does the report recommend?*

- New definitions for the terms *rent* and *continuing contravention* should be added to the act.

### *Why should the legislature or the executive implement these recommendations?*

- Adding these new definitions to the act will help to clarify complex ideas and to improve administration of strata corporations.

## **General meetings and strata-council meetings**

### *What changes does the report recommend?*

- The act should require that a defined form must be used to make a valid proxy appointment.
- Employees, agents, and contractors of the strata corporation, owner-developers (and their employees or agents), and strata managers (and their employees or agents) shouldn't be allowed to act as proxies.
- The act should spell out that a quorum must be present only at the start of a general meeting and that, if a quorum isn't present within 30 minutes of the scheduled time of the meeting, then the eligible voters constitute a quorum.
- Quorum at a strata-council meeting shouldn't be affected by a member's recusal due to a potential conflict of interest.
- An existing standard bylaw should be amended to make it clear that abstentions from voting aren't counted in determining whether a majority supports a decision at a strata-council meeting.
- The person who acts as chair of a general meeting shouldn't have a second or casting vote for the purpose of breaking a tie vote.
- References to a *secret ballot* in the standard bylaws should be changed to *written ballot* and written ballots on any issues other than a strata-council election should only be required when authorized by a majority vote.
- Election to a strata-council should require that the individual elected has received a majority of the ballots cast.
- The act should establish clear qualifications for strata-council members.
- It should be clearly permissible to elect additional strata-council members at a special general meeting.
- The standard bylaw establishing the order of agenda items at a general meeting should be revised and clarified.
- The act should require that a strata corporation must circulate minutes of a general meeting or notify owners of changes to strata fees resulting from a new budget within three weeks of the applicable meeting.

### *Why should the legislature or the executive implement these recommendations?*

- Requiring a defined form of proxy appointment and restricting who may act as a proxy will help to cut down on abuses of the proxy system.
- Clarifying the law on quorum, voting, and the order of agenda items at meetings will improve meeting efficiency and foster more effective decision-making.
- Setting out in the act that election to strata council requires a majority of the ballots cast and the criteria that must be met to be a council member will enhance the accountability of strata councils to the ownership.
- Requiring the circulation of general-meeting minutes will clarify the act and align it with best practices.

## **Finances**

### *What changes does the report recommend?*

- A strata corporation should be allowed to deposit in its contingency reserve fund money collected in excess of the amount required so long as no owner is entitled to receive a refund in an amount greater than that prescribed by regulation. The regulation should initially set this amount at \$500.
- If a strata corporation passes a resolution by a 3/4 vote authorizing cancellation of a strata-management contract, then the strata corporation must act on this resolution and provide notice of the cancellation within 90 days.
- The maximum fine for contravention of rental-restriction bylaw should be raised to \$2000.
- The maximum fee for an Information Certificate (Form B) should be raised to \$300 and the maximum fee for a Certificate of Payment (Form F) should be raised to \$50.
- A strata corporation should be allowed to charge a fee of up to \$0.15 per page for a record or document provided by electronic means.
- A special limitation period of four years should apply to claims that may be subject to the strata corporation's lien.

### *Why should the legislature or the executive implement these recommendations?*

- Changing the threshold at which a strata may deposit in its contingency reserve fund money collected on a special levy in excess of what is needed from \$100 to \$500 will give strata corporations greater administrative flexibility and will represent a more realistic threshold. Setting the maximum amount out in a regulation (as opposed to in the act) will make it more likely that the law will be able to keep pace with the times.

- Setting a 90-day limit for acting on a resolution to terminate a strata-management contract will add certainty to the relationship between strata corporations and strata managers by stamping out the prospect of holding an unimplemented resolution over the head of the strata manager.
- Raising the maximum fine for contraventions of a rental-restriction bylaw and the maximum fees for Information Certificates and Certificates of Payment will update those figures for the first time in close to 20 years and will ensure that the maximums reflect current circumstances.
- Setting a fee of up to \$0.15 per page for records or documents provided by electronic means (as opposed to the current fee of up to \$0.25 per page for records or documents not provided by electronic means) will establish a realistic fee and will encourage the use of modern communication tools.
- Creating a special limitation period will recognize the distinctive nature of debts owing to strata corporations that may be subject to the strata corporation's lien. It will also enhance the strata corporation's ability to collect such debts, relieving burdens that would otherwise fall on non-delinquent owners.

## Notices and communications

### *What changes does the report recommend?*

- Notice periods for a decision rendered as a result of a hearing at a council meeting or a hearing on granting an exemption from a rental-restriction bylaw should be lengthened to two weeks.
- The notice period for a decision on granting an exemption from a rental-restriction bylaw made when no hearing is requested should be lengthened to three weeks.

### *Why should the legislature or the executive implement these recommendations?*

- Extending these notice periods will set a more realistic standard for compliance in practice.