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BRITISH COLUMBIA
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STRATA PROPERTY LAW PROJECT—PHASE TWO

Backgrounder

Report on Insurance Issues for Stratas

Date: 12 March 2019

Introduction

Insurance is a pressing concern for all homeowners. It is no less important for people whose homes are located within a strata property. But insurance generates some complicated legal issues within strata properties that don't arise within a single-family home. This is because the one-to-one relationship of homeowner to insurer is refracted in a strata property into a more complex set of relationships involving (at a minimum) strata-lot owners, their insurers, the strata corporation, and its insurers. Experience in British Columbia and elsewhere has shown that legislation is necessary to coordinate these relationships.

This report examines how the *Strata Property Act* and the *Strata Property Regulation* are performing in carrying out that task. It contains 11 recommendations for reforming the act and the regulation, to improve how they function in governing insurance in strata properties.

About the Strata Property Law Project—Phase Two

This is the fourth 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, complex stratas, and governance issues for stratas.

Our supporters and the project committee

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 Municipal Affairs and 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.

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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 Insurance Issues for Stratas

This report was preceded by the committee's *Consultation Paper on Insurance Issues for Stratas*, which was published in September 2018. The consultation paper was made available via the BCLI website. Its publication marked the beginning of a three-month consultation on the committee's tentative recommendations.

This consultation attracted a high level of response, garnering a total of 90 responses. 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

Introduction

The report contains six chapters, including its brief introductory and concluding chapters. The introductory chapter gives an overview of the project and a summary of the report's recommendations.

Strata-property basics

The report's second chapter contains a general overview of strata-property law. This discussion is pitched at readers who are unfamiliar with the distinctive terms and concepts found in this body of law. It's intended to provide these readers with just enough information about the creation and operation of strata properties to allow them to work their way through the chapters that follow.

Insurance and strata properties

A thorough review of part 9 of the *Strata Property Act* forms the subject of the report's third chapter. Part 9 contains the act's legal framework for insurance in strata properties.

After briefly recounting the legislative history of part 9, the chapter gives a detailed review of its component parts. These components include the following provisions:

- legislative requirements—that is, mandates—on the strata corporation to obtain property and liability insurance;
- an enabling provision, allowing the strata corporation to obtain insurance other than that required by the legislation;

- a provision confirming the strata corporation’s insurable interest in the property it must insure;
- reviewing and reporting requirements imposed on the strata corporation;
- a provision spelling out the named insureds on the strata corporation’s insurance and establishing a rule preventing subrogated claims by the strata corporation’s insurers against those named insureds;
- a provision regulating the payment and application of insurance money;
- provisions regarding deductibles in the strata corporation’s insurance;
- an enabling provision for strata-lot owners to obtain their own insurance;
- a provision regulating contributions by the strata corporation’s and the owners’ insurers.

Issues for reform

While the committee reviewed all of part 9 of the act, its recommendations for reform concern only those areas where the committee saw a need for improvements. These areas consist of the following four topics.

- **The insurance mandate:** the committee recommended adding a requirement to the strata corporation’s insurance mandate to obtain directors-and-officers coverage. The committee also considered mandating coverage for two perils (earthquakes and overland floods) that aren’t currently within the scope of the major perils that must be covered.
- **Insurance deductibles:** the committee made two recommendations concerning deductibles: (1) amending the legislation to expressly assign responsibility for an insurance deductible to a responsible owner; and (2) requiring strata-lot owners to obtain their own insurance that covers payment of a deductible under a strata-corporation policy.
- **Named insureds:** the committee canvassed recent case law on this provision. In its view, legislative change isn’t required to ensure that it continues to fulfil its main purpose, which consists of establishing the rule preventing subrogated claims against named insureds.
- **Reporting and administration:** the committee recommended that the legislation require strata corporations to obtain appraisals to determine the adequacy of their property-insurance coverage; that the frequency of such appraisals be (at a minimum) once every three years; and that the strata corporation be required to inform owners and tenants of any material change in the strata corporation’s insurance coverage.

Finally, this report considers adoption of the standard-unit concept as a feature of British Columbia’s legislation, a topic which was framed as a question for discussion in the consultation paper. The standard unit is an idea used in other Canadian jurisdictions to determine

the scope of a strata corporation's property-insurance obligations. Adopting this concept in British Columbia would represent a significant change in this province's law. After reflecting on the comments received on its question for discussion and on recent developments elsewhere in Canada, the committee recommended that further study and consultation be devoted to this issue.

Draft legislation and regulations

The report contains a chapter setting out draft legislation and regulations, which are intended to illustrate how the committee's recommendations could be implemented by amendments to the *Strata Property Act* and the *Strata Property Regulation*.

Conclusion

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