



BRITISH COLUMBIA LAW INSTITUTE

1822 East Mall, University of British Columbia

Vancouver, British Columbia V6T 1Z1

Voice: (604) 822 0142 Fax: (604) 822 0144 E-mail: bcli@bcli.org

Website: www.bcli.org

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LAW INSTITUTE STRATA PROPERTY LAW PROJECT—PHASE TWO

Backgrounder

Legislative Fact Sheet:

Report on Common Property, Land Titles, and Fundamental Changes for Stratas

Date: 18 June 2019

Introduction

BCLI's Strata Property Law (Phase Two) Project Committee has made recommendations to reform the *Strata Property Act* and the *Strata Property Regulation* in its *Report on Common Property, Land Titles, and Fundamental Changes for Stratas*. These recommendations are intended to improve the legal framework that governs the report's three subjects. 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.

Common Property

What changes does the report recommend?

- Limiting the term of any lease of a fixture that is common property or of common assets that an owner-developer enters into while exercising the powers of a strata council to five years (unless the superintendent of real estate agrees to authorize a longer lease).
- Doing away with the owner-developer's power to enter into leases and licences of parking stalls and storage lockers.
- Expanding the procedure that allows an owner-developer to amend the strata plan and designate parking stalls as limited common property to also apply to storage lockers.

supported by



- Extending the time in which an owner-developer may amend the strata plan to designate parking stalls or storage lockers as limited common property from the first annual general meeting to the fifth annual general meeting.
- Amending the definition of *limited common property* to clarify that limited common property is a form of common property.

Why should the legislature or the executive implement these recommendations?

- Even though the *Strata Property Act* requires an owner-developer (when acting as a strata council in the early days of a strata corporation) to act with a view to the best interests of the strata corporation, experience has shown that owner-developers can meet this general best-interests test and still leave the strata corporation bound long-term to agreements that aren't as favourable to the strata corporation as its subsequent owners would have hoped. Other provinces have addressed the concerns that flow from this situation with robust legislative powers to terminate such agreements. Striking a balance between these two poles by providing that the most contentious of these agreements be limited to terms that don't exceed five years provides the best means to protect the interests of all concerned parties.
- Allocating parking stalls and storage lockers by leases and licences in strata corporations has bred confusion and conflict. If the owner-developer is given enhanced powers to amend the strata plan and designate parking stalls and storage lockers as limited common property for the benefit of a strata lot, then the use of leases and licences may be done away with, leaving strata corporations with clearer parking and storage arrangements while at the same time not unduly impairing owner-developers' interests.
- Strata-lot owners and strata councils are often confused by how limited common property relates to common property, believing that the act sets them up as distinct opposing categories. This confusion can hamper management of a strata property. The report's amendment will clear up the confusion by stating in the act that limited common property is a form of common property.

Land Titles

What changes does the report recommend?

- Requiring a strata plan that depicts the boundaries of strata lots as the exterior surface of a floor, wall, or ceiling, or as a point external to a building, to meet the same approval requirements as though it were a bare-land strata plan.
- Extending the definition of *previously occupied* (which is used to determine when a building strata plan must be approved by an approving authority) to exclude structures used for temporary construction purposes.
- Requiring strata plans to include at least one cross-section.

- Requiring strata plans to include any representations needed to identify and locate common property.
- Requiring a sketch plan that is deposited in the land title office in conjunction with a resolution designating limited common property to be prepared by a British Columbia land surveyor.

Why should the legislature or the executive implement these recommendations?

- Requiring a strata plan that depicts the boundaries of strata lots as the exterior surface of a floor, wall, or ceiling, or as a point external to a building, to meet the same approval requirements that are imposed on a bare-land strata plan will address an ongoing problem in subdivision control. Some developers have used strata plans with these features to evade the stringent approval requirements that apply to bare-land strata plans. This tailored response would stamp out an unacceptable practice, with relatively little disruption of established practices in land development.
- Amending the definition of *previously occupied* will clarify a point of confusion that has arisen in practice.
- The recommendations relating to strata plans and sketch plans will enshrine best practices in the legislation, and will also support practice developments within the surveying profession.

Fundamental Changes

What changes does the report recommend?

- Lowering the voting threshold to authorize amending a strata plan to designate limited common property to an 80-percent vote.
- Lowering the voting threshold to authorize amending a strata plan to add a strata lot to common property to an 80-percent vote.
- Lowering the voting threshold to authorize amending a Schedule of Unit Entitlement to reflect a change in the habitable area of a residential strata lot in a strata plan in which the unit entitlement of the strata lot is calculated on the basis of habitable area to an 80-percent vote.
- Requiring a Schedule of Voting Rights to accompany deposit of a strata plan containing at least one nonresidential strata lot.

Why should the legislature or the executive implement these recommendations?

- Lowering the voting threshold in these three cases will build some additional flexibility in the act. It will also harmonize these voting thresholds with the voting threshold for authorizing termination of a strata. Concerns about any potential for

abuse can be addressed by retaining the unanimous-vote threshold for amending the strata plan to remove a designation of limited common property.

- Requiring a Schedule of Voting Rights to accompany deposit of a strata plan containing at least one nonresidential strata lot will promote certainty for strata-lot owners and best practices for owner-developers.