



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

A report published as part of the Strata Property Law Project—Phase Two

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

**A Report Prepared for the British Columbia
Law Institute by the Members of the
Strata Property Law (Phase Two) Project
Committee**

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British Columbia Law Institute

1822 East Mall, University of British Columbia, Vancouver, BC, Canada V6T 1Z1

Voice: (604) 822-0142 Fax: (604) 822-0144 E-mail: bcli@bcli.org
WWW: <https://www.bcli.org>

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Introductory Note

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

This report covers three subjects that each have a major bearing on the nature of strata properties as interests in land. The report's subjects crop up at crucial moments in a strata property's life cycle. A strata property is created by deposit of a strata plan in the land title office. From this first interaction with the land-title system, it is important that provisions for strata properties and land titles are symbiotic and mutually supporting. Common property is an essential element in the unique strata-property conception of land ownership. Among other legal issues, many operational concerns for strata properties turn on an understanding of common property. Finally, some mature strata properties find themselves at a crossroads, where rewriting the legal or financial makeup of the strata property becomes an option to consider. These strata properties must engage with the legislation's system for managing fundamental changes.

This report contains recommendations to amend the *Strata Property Act* and the *Strata Property Regulation* that address the definition of common property, transactions involving common property, parking stalls as common property, emerging issues in subdivision control, amendments to the strata plan and its accompanying documents, and amalgamation of strata corporations. The report also contains draft legislation and regulations, illustrating how these recommendations could be implemented.

On behalf of the board of directors of the British Columbia Law Institute, I want to thank the members of the Strata Property Law (Phase Two) Committee for their hard work on this report and their steadfast commitment to this project, which has tackled a subject of increasing importance, as more and more British Columbians have found themselves housed or doing business within a strata property. As the fifth and final report in the project, this report marks a milestone for the project. BCLI fully supports the committee's recommendations and endorses this report.



Thomas L. Spraggs
Chair,
British Columbia Law Institute
June 2019

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 areas selected for study in this phase-two project. These recommendations will be set out in final reports for each area.

The members of the committee are:

Patrick Williams—chair <i>(Partner, Clark Wilson LLP)</i>	Veronica Barlee (Jul. 2014–present) <i>(Senior Policy Advisor, Housing Policy Branch, Ministry of Municipal Affairs and Housing)</i>
Larry Buttress (Oct. 2013–Jun. 2016) <i>(Deputy Executive Officer, Real Estate Council of British Columbia)</i>	Garth Cambrey <i>(Real Estate Institute of British Columbia)</i>
Tony Gioventu <i>(Executive Director, Condominium Home Owners Association)</i>	Ian Holt (Oct. 2016–Apr. 2017) <i>(Realtor, Re/Max Real Estate Services)</i>
Tim Jowett <i>(Senior Manager, E-Business and Deputy Registrar, Land Title and Survey Authority)</i>	Alex Longson (Jul. 2016–present) <i>(Senior Compliance Officer, Real Estate Council of British Columbia)</i>
Judith Matheson (Oct. 2013–Oct. 2016) <i>(Realtor, Coldwell Banker Premier Realty)</i>	Elaine McCormack <i>(Partner, Wilson McCormack Law Group)</i>
Susan Mercer (Sep. 2016–present) <i>(Notary Public)</i>	Doug Page (Oct. 2013–Jul. 2014) <i>(Director of Legislation, Housing Policy Branch, Ministry of Municipal Affairs and Housing)</i>
David Parkin <i>(Assistant City Surveyor, City of Vancouver)</i>	Allen Regan <i>(Vice-President, Bayside Property Services Ltd.)</i>
Garrett Robinson (Apr. 2017–present) <i>(Realtor, Re/Max Crest Realty—Westside)</i>	Stanley Rule (Oct. 2013–Sep. 2016) <i>(Lawyer, Sabey Rule LLP)</i>
Sandy Wagner <i>(President of the Board of Directors, Vancouver Island Strata Owners Association)</i>	Ed Wilson <i>(Partner, Lawson Lundell LLP)</i>

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>**

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BCLI also thanks all those individuals and organizations that participated in the public consultation that preceded this report. Their responses and comments helped the committee in shaping and evaluating the final recommendations contained in this report. For publicizing the consultation paper that preceded this report, BCLI thanks the *Advocate*, the Canadian Bar Association—BC Branch, the Condominium Home Owners Association, and the Vancouver Island Strata Owners Association.

The Strata Property Law (Phase Two) Project has been made possible by support 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. BCLI thanks all these organizations for their generous contributions to the project. BCLI also thanks the Vancouver law firm Clark Wilson LLP for hosting committee meetings.

Finally, the staff of BCLI have played a key role in designing, managing, and executing the work leading up to this report. Jim Emmerton (executive director to June 2015) and Kathleen Cunningham (executive director June 2015 to present) have both provided executive planning and management for the project. Kevin Zakreski (staff lawyer) is the project manager, and was also responsible for drafting this report and the consultation paper that preceded it. He, Greg Blue, QC (senior staff lawyer), and Valerie Le Blanc (staff lawyer) have contributed to supporting project-committee meetings. And the following staff members have also contributed to the research and administration for this project: Emily Amirkhani (University of Victoria Law Coop student), Alexandre Blondin (research lawyer), Gurinder Cheema (summer law student), Allison Curley (summer law student), Raissa Dickinson (manager, community engagement), Eric Hou (summer law student), Rachel Kelly (research lawyer), Shauna Nicholson (legal assistant), Sergio Ortega (University of

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Victoria Law Coop student), Elizabeth Pinsent (office administrator), and Bénédicte Schoepflin (social media coordinator).

EXECUTIVE SUMMARY

An overview of the report

This report tackles selected legal issues in three distinct areas of strata-property law. It contains 25 recommendations to reform the *Strata Property Act* and the *Strata Property Regulation*. These recommendations address some of the basic building blocks of a strata property, many of which serve to define the nature of a strata property as an interest in land.

The report examines issues that arise over the course of a strata property's life cycle: from the early planning and conception of a strata-property development, through its day-to-day operation, and to the major, deeply altering crossroads that some mature strata properties encounter. Many of these issues relate to the strata plan, a foundational document for a strata property that shapes and defines the strata property as an interest in land.

The report first considers common property: how it is defined, long-term leases of it, and the special case of parking stalls and storage lockers as common property. Then it looks at the interaction of the *Strata Property Act* with British Columbia's leading real-property statute, the *Land Title Act*. Here it examines emerging issues in the subdivision of land and ways in which the depiction of common property on a strata plan can be improved. Finally, the report grapples with fundamental changes to a strata property. These are the sorts of major transactions that effectively reorder the legal interests in a strata property or the ways in which financial responsibilities within a strata property are allocated. They tend to require authorization by a unanimous vote of the strata-lot owners. The overriding question for this part of the report is whether this voting threshold should be lowered to an 80-percent vote, which would mirror recent legislative changes respecting terminating a strata property.

About the Strata Property Law Project—Phase Two

This is the fifth and final report to be 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, governance issues for stratas, and insurance 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.

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 Common Property, Land Titles, and Fundamental Changes for Stratas

This report was preceded by the committee's *Consultation Paper Common Property, Land Titles, and Fundamental Changes for Stratas*. Published in December 2018, the consultation paper was the centrepiece of a three-month public consultation. During the public consultation, respondents had the option of making submissions on the full 25 tentative recommendations in the consultation or on a summary consultation, which contained three highlighted proposals (one each for common property, land titles, and fundamental changes).

The consultation generated 51 responses (with 41 of these responses being made to the full consultation paper and 10 to the summary consultation). After the consultation period closed, the committee met to consider these responses, which helped the committee in refining its thinking on the final recommendations in its report.

Content of the report

Introduction

The report contains seven chapters, including its brief introductory and concluding chapters. The introductory chapter gives an overview of the project and the consultation process. It also provides 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.

Common property

In simple terms, anything depicted on a strata plan that isn't a strata lot is considered to be common property. But there are a handful of areas where it's difficult to draw a straightforward, black-and-white distinction between strata lots and common property. These cases involve certain kinds of property that (1) are located in a boundary zone or (2) form part of an integrated system, which itself may be located within either common property or a strata lot, or both.

Even though common property is a foundational part of the strata-property concept, some aspects of its definition continue to vex participants in the strata sector. In this chapter, the committee considers amending the definitions of *common property* and its subset *limited common property* to address frustrations that have cropped up in practice. After wrestling with the issues that arise from the current definition of *common property*, the committee determined that retaining the status quo is the safest and best option. The committee does recommend a clarifying amendment to the definition of *limited common property*.

Then, the chapter examines a practice that has also caused frustrations—long-term leases of common property entered into by a strata property's owner-developer. The committee recommends reining in this practice, by limiting the terms of such leases to five years, when the common property at issue is a fixture.

Finally, the chapter looks at parking stalls and storage lockers, with a particular focus on the procedure set out in section 258 of the *Strata Property Act*. This procedure allows an owner-developer to amend a strata plan after it has been deposited in the land title office. The committee recommends reforming the procedure by giving an owner-developer until the fifth annual general meeting to amend the strata plan and designate parking stalls and storage lockers as limited common property. In addition, the committee recommends doing away with the practice of allowing leases or licences of parking stalls and storage lockers.

Land titles

The *Strata Property Act* was intended to work in harmony with British Columbia's system for registering interests in land under the *Land Title Act*. The committee examined the relationship between the two acts and made recommendations to address two areas where conflicts have emerged.

The first concerns subdivision of land. In British Columbia, subdivision is controlled by a detailed legal framework. The deposit of a strata plan in the land title office is considered to be a subdivision. How this act is treated depends on the kind of strata plan being deposited. One kind, commonly referred to as a building or conventional strata plan, subdivides a building and is subject to a light regulatory touch if the building hasn't been previously occupied. The other kind, called a bare-land strata plan, subdivides land. It is subject to the kind of detailed review and approval requirements that apply to any other type of subdivision of land.

This differential treatment has led, in some cases, to abusive practices in which what is functionally a bare-land strata plan is characterized as a building strata plan in order to benefit from the lighter regulatory requirements. The committee recommends targeted changes to the *Strata Property Act* to stamp out this practice. These targeted changes will also preserve the current regulatory structure for true building strata plans.

The other area considered in this chapter involves the depiction of common property on a registered strata plan. The committee recommends a range of specific reforms that would clarify this area. These recommendations are intended to provide certainty for strata-lot owners and the broader land-title system.

Fundamental changes

This chapter examines the voting threshold for authorizing far-reaching changes to a strata property, such as amending the strata plan to designate limited common property, amending a Schedule of Unit Entitlement, and amalgamating strata corporations. In each case, the committee considered whether the existing threshold should be changed to a resolution passed by an 80-percent vote.

The committee had a mixed response to the issues for reform in this chapter. In its view, circumstances justify lowering the voting threshold in some cases but not in others. For example, the committee recommends lowering the threshold for authorizing an amendment to a strata plan to designate limited common property. The committee favours this approach in this case because it will give strata corporations added flexibility and is unlikely to prejudice the interests of a strata-lot owner. But the committee favours retaining the current voting threshold for the converse case,

in which a strata plan is amended to remove a designation of limited common property. In its view, this case presents a greater danger of the procedure being used for abusive reasons.

Draft legislation and regulations

The report also contains a chapter setting out how these recommendations may be implemented by amendments to the *Strata Property Act* and *Strata Property Regulation*. The draft legislative and regulatory provisions are each accompanied by brief comments.

Conclusion

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

Chapter 1. Introduction

An Overview of this Report's Subjects

“Strata plans are a mechanism by which the land is subdivided into individual strata lots” and common property.¹ By causing this result, “strata plan[s] and the accompanying documents deposited in the land title office determine the legal structure of the strata corporation and the physical structure of the strata development.”² For this reason, strata plans are commonly described as “fundamental”³ and “essential”⁴ documents for strata properties.

Strata plans are at the heart of this report, which examines three subjects. This report contains recommendations to reform the *Strata Property Act*⁵ and the *Strata Property Regulation*⁶ to address legal issues concerning common property, land-title issues, and fundamental changes for strata properties. Even though the reach of this report is more expansive than a systematic examination of strata plans, as the report considers common property, land titles, and fundamental changes for strata properties, it ends up spending much of its time looking at legal issues in those three subjects from the standpoint of the issues’ effects on strata plans.

The report includes recommendations addressing the definition of *common property*, transactions involving common property, and parking stalls and storage lockers. Among the land-title issues it considers are emerging issues in subdivision control, which can flow from differences in kinds of strata plans. Finally, the report examines wide-ranging fundamental changes to a strata property, such as amending a strata plan, amending the Schedule of Unit Entitlement, or amalgamating strata corporations.

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1. *Terminal City Club Tower v British Columbia (Assessor of Area No 9—Vancouver)*, 2004 BCCA 466 at para 37, Saunders JA, dissenting (quoting decision of the Property Assessment Appeal Board of British Columbia).
 2. Continuing Legal Education Society of British Columbia, ed, *British Columbia Strata Property Practice Manual* (Vancouver: Continuing Legal Education Society of British Columbia, 2008) (loose-leaf 2019 update) at § 3.1.
 3. *Chow v The Owners, Strata Plan NW 3243*, 2015 BCSC 1944 at para 5, Smith J.
 4. Mike Mangan, *The Condominium Manual: A Comprehensive Guide to Strata Law in British Columbia*, 3rd ed (Vancouver: Strata Publishing, 2010) at 7.
 5. SBC 1998, c 43.
 6. BC Reg 43/2000.
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About the Strata Property Law (Phase Two) Project

This *Report on Common Property, Land Titles, and Fundamental Changes for Stratas* is part of the British Columbia Law Institute's ongoing Strata Property Law Project—Phase Two. BCLI began the Strata Property Law Project—Phase Two in summer 2013. The project's goals are to study seven areas of strata-property law, identify issues calling for reform of the law, and recommend changes to the *Strata Property Act* to address those issues.

The phase-two project builds on BCLI's Strata Property Law Project—Phase One, which was completed in 2012. Over the course of the phase-one project, BCLI carried out initial legal research and focussed consultation with leading experts in the strata-property field. The results of this research and consultation were published in BCLI's *Report on Strata Property Law: Phase One*,⁷ which recommended that BCLI undertake a law-reform project to examine the following subjects: (1) fundamental changes to a strata; (2) complex stratas; (3) selected governance issues; (4) common property; (5) selected land-title issues; (6) selected insurance issues; (7) leasehold stratas.

The first subject in the phase-two project was addressed in the project's first two publications, the *Consultation Paper on Terminating a Strata*⁸ and the *Report on Terminating a Strata*.⁹ The Legislative Assembly of British Columbia implemented this report's recommendations in fall 2015.¹⁰

Complex stratas, the project's second subject, were the focus of the *Consultation Paper on Complex Stratas*¹¹ and the *Report on Complex Stratas*.¹²

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7. Report 70 (2012), online: <www.bcli.org/sites/default/files/2012-11-30_BCLI_Report_on_Strata_Property_Law--Phase_One.pdf> [perma.cc/FBV8-J9C7].
 8. (2014), online: <www.bcli.org/wordpress/wp-content/uploads/2014/05/2014-05-15_BCLI-Consultation-Paper-on-Terminating-a-Strata-FINAL.pdf> [perma.cc/XK58-9PLF].
 9. Report 79 (2015), online: <www.bcli.org/wordpress/wp-content/uploads/2015/02/2015-02-20_BCLI-SPL-Ph2-Report-on-Terminating-a-Strata-FINAL.pdf> [perma.cc/GW7W-VCBX].
 10. See *Natural Gas Development Statutes Amendment Act, 2015*, SBC 2015, c 40, ss 37–55 (in force 28 July 2016).
 11. (2016), online: <www.bcli.org/wordpress/wp-content/uploads/2016/09/2016-08-31_BCLI-Consultation-Paper-on-Complex-Stratas-FINAL.pdf> [perma.cc/A43A-3NN7].
 12. Report 81 (2017), online: <www.bcli.org/wordpress/wp-content/uploads/2017/06/2017-06-19_BCLI-SPL-Ph2-Report-on-Complex-Stratas-FINAL.pdf> [perma.cc/NZZ8-JQMP].
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Governance, the project's third subject, was addressed in the *Consultation Paper on Governance Issues for Stratas*¹³ and the *Report on Governance Issues for Stratas*.¹⁴

Finally, insurance issues have been the subject of the *Consultation Paper on Insurance Issues for Stratas*¹⁵ and the *Report on Insurance Issues for Stratas*.¹⁶

Unfortunately, the time and resources available to the project have ruled out the planned review of its seventh subject, leasehold strata plans.

The Phase-Two Project's Supporters

The Strata Property Law Project—Phase Two has been made possible by project grants 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.

The Strata Property Law (Phase Two) Project Committee

In carrying out the phase-two project, BCLI is grateful to have the assistance of an expert project committee. Brief biographies of committee members may be found in appendix C.¹⁷

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13. (2018), online: <www.bcli.org/wordpress/wp-content/uploads/2018/03/2018-03-13_BCLI-Consultation-Paper-on-Governance-Issues-For-Stratas-CONSULTATION-FINAL.pdf> [perma.cc/3A57-2889].
 14. Report 85 (2019), online: <www.bcli.org/wordpress/wp-content/uploads/2019/01/Report-on-Governance-issues-final-report-WEB.pdf> [perma.cc/BRQ5-L6ZB].
 15. (2018), online: <www.bcli.org/wordpress/wp-content/uploads/2018/09/2018-09-14_BCLI-Consultation-Paper-on-Insurance-Issues-For-Stratas-FINAL.pdf> [perma.cc/S84T-3JYK].
 16. Report 86 (2019), online: <www.bcli.org/wordpress/wp-content/uploads/2019/03/Insurance-Issues-for-Stratas_Report.pdf> [perma.cc/L5LD-3GET].
 17. See, below, at 137–144.
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Consultation Paper on Common Property, Land Titles, and Fundamental Changes for Stratas

This report was preceded by the committee's *Consultation Paper on Common Property, Land Titles, and Fundamental Changes for Stratas*.¹⁸ Published in December 2018, this consultation paper was the centrepiece of the committee's public consultation, which ran to 28 February 2019.

The public consultation gave respondents two options for providing their responses. The full consultation paper set out 25 tentative recommendations for reform, for public review and comment. Respondents who favoured engaging with a shorter document were given the option to respond to the summary consultation, which contained three highlighted proposals (one each for the subjects of common property, land titles, and fundamental changes).

In total, the consultation received 51 responses. Among these responses, 41 were made to the full consultation paper and 10 to the summary consultation. The committee considered responses at a meeting held after the consultation period closed, which helped the committee in forming and refining the final recommendations set out in this report.

An Overview of this Report

Apart from its brief introductory and concluding chapters, and a chapter providing an overview of the basics of strata-property law, this report divides neatly into three substantive chapters:

- **common property:** this chapter contains the committee's extensive consideration of potential changes to the definition of *common property*, and its proposed reforms to the definition of *limited common property*, to limit the terms of a lease of common-property fixtures entered into by the owner-developer on behalf of the strata corporation, and to the allocation of parking stalls and storage lockers under section 258 of the act;
- **land titles:** this chapter examines the intersection of the *Strata Property Act* with the *Land Title Act*,¹⁹ containing recommendations on emerging issues

18. (2018), online: <www.bcli.org/wordpress/wp-content/uploads/2018/11/2018-12-07_BCLI-CP-on-Common-Property-Land-Titles-and-Fundamental-Changes-for-Stratas-FINAL-reduced.pdf> [perma.cc/A2EQ-H5XB].

19. RSBC 1996, c 250.

in subdivision control involving strata plans, depicting common property and the vertical limits of common property on strata plans, and on requiring a Form F (Certificate of Payment) when a strata lot is transferred under a court order;

- **fundamental changes:** this chapter considers far-reaching changes to strata plans and strata corporations, such as amending a strata plan or amending a Schedule of Unit Entitlement and changing the basis for calculating contributions to strata expenses, with a focus on whether the voting threshold for resolutions authorizing such fundamental changes may be lowered from a unanimous vote²⁰ to an 80-percent vote.²¹

20. See *Strata Property Act*, *supra* note 5, s 1 (1) “unanimous vote” (“means a vote in favour of a resolution by all the votes of all the eligible voters”).

21. See *ibid*, s 1 (1) “80% vote” (“means a vote in favour of a resolution by at least 80% of the votes of all the eligible voters”).

Chapter 2. Strata-Property Basics

Introduction

This report deals with some of the foundational pieces of strata-property law: strata plans, common property, unit entitlement. A detailed introduction to the legal issues facing these subjects comes in the chapters that follow.

But readers may still have some questions about the basic functions of strata-property law. What is a strata property at law? How is it established? What are its essential elements? How are decisions made among a collective of property owners? How do those owners divide up common expenses? Who's responsible for repairs? And, if there is a conflict on a legal issue, who resolves it?

This chapter is devoted to giving answers to these questions. The answers are deliberately concise, as these questions don't form the core of this report. But it's still important to have some grasp of how the law operates on this level. This information forms necessary background to the more in-depth discussions that dominate the following chapters.

The Essential Elements of a Strata Property

Strata properties²² are a legal device that accommodates individual ownership of an interest in land within a collective, multi-unit structure. The law contains many such devices. What sets a strata property apart from, say, a cooperative, a joint tenancy, a tenancy in common, or a long-term lease, are the following “two essential elements”:

- the division of property into units, to be individually owned, and common elements, to be owned in common by the owners of the units; and
- an administrative framework to enable the owners to manage the property.²³

22. For many people the name *strata property* itself is the first stumbling block that's encountered in a discussion of this area of the law. British Columbia is the only jurisdiction in Canada that uses this name. Its significance is mainly historical: it reflects the origins of this province's law in legislation that was enacted first in Australia. Other Canadian provinces and territories drew on American law to create their legislation. So they adopted the leading American word, *condominium*. The two terms actually describe the same concept. Nothing in law turns on the use of one or the other.

23. Ontario Law Reform Commission, *Report on the Law of Condominium* (Toronto: Department of the Attorney General, 1967) at 3.

These essential elements exist within a body of law that “reflects the combination of several legal concepts”—especially concepts drawn from real-estate law, easements, and corporate law.²⁴

The Three Generations of Strata-Property Legislation

Introduction

It might be possible to achieve this combination of rules and essential elements by carefully executed easements and agreements. But throughout Canada, the United States, and Australia, strata properties have been fostered by legislation.

British Columbia is no exception to this approach. This province has supported the creation and administration of strata properties by legislation, which can be seen as developing in three distinct generations.

Strata Titles Act 1966–74

In April 1966, British Columbia became the first jurisdiction in Canada to enact strata-property legislation. The first-generation act, called the *Strata Titles Act*, came into force in September of that year.²⁵

The first-generation act was skeletal legislation. It did little more than enable people to create and administer strata properties.

Strata Titles Act/Condominium Act 1974–2000

In 1974, the second generation of the legislation appeared.²⁶ The second-generation act retained the framework set out in the first-generation act and enhanced it by adding new provisions dedicated to consumer protection and addressing concerns about the administration of strata properties.

24. *Shaw Cablesystems v Concord Pacific Group*, 2007 BCSC 1711 at para 6, Leask J (quoting 2475813 *Nova Scotia Ltd v Rodgers*, 2001 NSCA 12 at para 5, Cromwell JA).

25. SBC 1966, c 40.

26. *Strata Titles Act*, SBC 1974, c 89. See also *Strata Titles Amendment Act, 1977 (No 2)*, SBC 1977, c 64 (containing a major set of amendments to the 1974 act).

In 1979, the name of the legislation was changed to *Condominium Act*.²⁷ The second-generation act is commonly known by this name.²⁸

Strata Property Act 2000–present

The third generation of strata-property legislation, the *Strata Property Act*, was enacted in July 1998.²⁹ The *Strata Property Act* was only brought into force after a transitional period, which lasted until 1 July 2000.

Although it preserves much of the framework put in place by the first two generations of the legislation, the *Strata Property Act* also contains a large number of provisions not found in previous acts, making it a far more comprehensive statute than its two predecessors.

Parts of the *Strata Property Act* have been significantly amended in 2009,³⁰ 2012,³¹ and 2015.³² These changes primarily relate to financial planning, dispute resolution, and termination.

The *Strata Property Act* is probably the most detailed and sophisticated legislation of its kind in Canada. It contains an array of laws on subjects that aren't addressed in equivalent statutes found in the other provinces or territories.³³ But the act was also consciously drafted to provide enhanced flexibility to certain kinds of stratas. This quality can make it difficult to discuss the act's provisions, as it's often necessary to note both a general rule and a series of exceptions. For the sake of simplicity, the

27. RSBC 1979, c 61.

28. See *Condominium Act*, RSBC 1996, c 64.

29. *Supra* note 5.

30. See *Strata Property Amendment Act, 2009*, SBC 2009, c 17.

31. See *Civil Resolution Tribunal Act*, SBC 2012, c 25.

32. See *Natural Gas Development Statutes Amendment Act, 2015*, *supra* note 10.

33. See Alberta: *Condominium Property Act*, RSA 2000, c C-22 (see also *Condominium Property Amendment Act, 2014*, SA 2014, c 10, s 55 [partially in force]); Saskatchewan: *The Condominium Property Act, 1993*, SS 1993, c C-26.1; Manitoba: *The Condominium Act*, SM 2011, c 30, CCSM c C170; Ontario: *Condominium Act, 1998*, SO 1998, c 19 (see also *Protecting Condominium Owners Act, 2015*, SO 2015, c 28, Schedule 1 [partly in force]); Québec: arts 1038–1109 CCQ; New Brunswick: *Condominium Property Act*, SNB 2009, c C-16.05; Prince Edward Island: *Condominium Act*, RSPEI 1988, c C-16; Nova Scotia: *Condominium Act*, RSNS 1989, c 85; Newfoundland and Labrador: *Condominium Act, 2009*, SNL 2009, c C-29.1; Yukon: *Condominium Act*, RSY 2002, c 36; Northwest Territories and Nunavut: *Condominium Act*, RSNWT 1988, c C-15 (duplicated for Nunavut by s 29 of the *Nunavut Act*, SC 1993, c 28).

pages that follow will focus on the general provisions and will touch on exceptions, where necessary, in footnotes.

The Owner-Developer

The person who starts the stratification process is called an *owner-developer*.

Before someone becomes an owner-developer, that person is an owner of land³⁴ who wants to develop it as a strata property. That person is responsible for shepherding the project through the procedure for stratifying land. After this process is complete, the owner-developer holds all titles in the development, which are gradually sold off to purchasers.

The owner-developer can have a decisive influence over both the original conception and the ongoing operation of a strata property. Many of the key decisions that are made in setting up a strata property originate with the owner-developer. These decisions can reverberate long after the owner-developer has left the scene.

Creation of a Strata Property by Deposit of a Strata Plan

The stratification process begins with the deposit in the land title office of a strata plan. A strata plan is a document prepared by a qualified land surveyor, which is required to contain specific details and meet exacting technical standards.³⁵ The major legal effect of depositing a strata plan in the land title office is to subdivide land into two or more strata lots, with associated common property.³⁶

34. And here's the first exception to note: in some cases, it isn't the landowner but rather a lessee under a long-term ground lease who acts as the owner-developer. The act calls these cases *leasehold strata plans*. For simplicity's sake, the discussion that follows will focus on the much more common case of a landowner developing a strata property and will downplay the rarer leasehold strata plan.

35. See *Strata Property Act*, *supra* note 5, s 244.

36. See *ibid*, s 239 (1).

Kinds of Strata Plans

There are essentially two kinds of strata plans under the *Strata Property Act*. One is called a *bare-land strata plan*. It concerns the subdivision of land.³⁷

The other kind of strata plan isn't named in the act, but it's commonly called a *building or conventional strata plan*.³⁸ This kind of strata plan deals with the subdivision of a building. This is the more common kind of strata plan.

Among the things that a strata plan does, one of the most important is to distinguish between the two building blocks of a strata property: strata lots and common property.

Strata Lots

A *strata lot* is the legislation's name for the unit in a strata property that is individually titled and owned. A common example of a strata lot is an apartment in a residential strata property. But it is important to bear in mind that nothing in strata-property law restricts strata lots to apartments or residential uses. Strata lots may be townhouses, shops used for commercial purposes, industrial plants, recreational cottages, or parking lots. So long as they are identified as such on a strata plan, strata lots may be almost anything within the ingenuity of an owner-developer.

But, that said, the act does, in many places, distinguish between strata lots based on their uses. This distinction turns on whether or not the strata lot is used for residential purposes. *Residential strata lot* is a defined term, meaning "a strata lot designed or intended to be used primarily as a residence."³⁹ Strata lots used for any other purpose are referred to as *nonresidential strata lots*. Whether a strata lot is a resi-

37. See *ibid*, s 1 (1) "bare land strata plan" ("means (a) a strata plan on which the boundaries of the strata lots are defined on a horizontal plane by reference to survey markers and not by reference to the floors, walls or ceilings of a building, or (b) any other strata plan defined by regulation to be a bare land strata plan."). Regarding paragraph (b), note that to date no regulations on this point have been adopted.

38. See Adrienne M Murray, "The Basics of Strata Property Law," in Continuing Legal Education Society of British Columbia, ed, *Strata Property—2006 Update: Materials prepared for the Continuing Legal Education seminar, Strata Property Fundamentals for Lawyers, held in Vancouver, B.C., on October 20, 2006* (Vancouver: Continuing Legal Education Society of British Columbia, 2006) 1.1 at 1.13; Mangan, *supra* note 4 at 17; *British Columbia Strata Property Practice Manual*, *supra* note 2 at § 2.15.

39. *Supra* note 5, s 1 (1) "residential strata lot." See also *East Barriere Resort Ltd v The Owners, Strata Plan KAS1819*, 2017 BCCA 183.

dential strata lot or a nonresidential strata lot can have a bearing on how certain provisions relating to property, expenses, and governance are applied to it.

Common Property, Limited Common Property, and Common Assets

Common property

In its simplest terms, common property is everything shown on a strata plan that isn't part of a strata lot. Some concrete examples of common property include things like hallways, stairwells, lobbies, elevators, parking stalls, balconies, and patios.

The vast majority of property depicted on strata plans can be analyzed using this simple, clear-cut dichotomy of being either a strata lot or common property. But the realities of constructing multi-unit buildings entail that there will also be some grey areas that complicate this picture. These grey areas generate most of the legal issues in this area. They are discussed in detail in the next chapter.⁴⁰

Limited common property

It's obvious from the name that common property is property that's held in common, meaning that it's something all the strata-lot owners share.⁴¹ But the *Strata Property Act* doesn't stop there. It allows, in some cases, for individual strata-lot owners or groups of strata-lot owners to have enhanced rights to access and use select items of common property.

The most important example of an owner having an enhanced right to common property is the category of limited common property. *Limited common property* is common property that has been "designated for the exclusive use of the owners of one or more strata lots."⁴² Some typical examples of things that might be limited common property are a balcony for an apartment in a high-rise tower, a patio for a townhouse or ground-floor apartment, and a parking space in a parking lot.

40. See, below, at 26–28.

41. See *Strata Property Act*, *supra* note 5, s 66 ("An owner owns the common property and common assets of the strata corporation as a tenant in common in a share equal to the unit entitlement of the owner's strata lot divided by the total unit entitlement of all the strata lots.").

42. *Ibid*, s (1) (1) "limited common property."

The next chapter contains more detail on the legal nature of limited common property and how it is designated.⁴³

Common assets

Finally, the act also characterizes some property as *common assets*. The definition of common assets contains two categories. The first is “personal property held by or on behalf of a strata corporation.”⁴⁴ Examples of this category include items of property like furniture in a lobby or exercise equipment in a gym. The second category is “land held in the name of or on behalf of a strata corporation, that is (i) not shown on the strata plan, or (ii) shown as a strata lot on the strata plan.”⁴⁵ An example of (i) is any offsite land owned or held on behalf of the strata corporation. An example of (ii) is a caretaker’s suite in a residential building which is a strata lot.

The Strata Corporation

In addition to subdividing land into strata lots and common property, depositing a strata plan in the land title office “establishes” a strata corporation.⁴⁶ This strata corporation is the major component of the second essential element of a strata property (“an administrative framework to enable the owners to manage the property”).⁴⁷ It is the vehicle by which strata-lot owners are able to administer their strata property.

The act says that the purpose of a strata corporation is to take responsibility for “managing and maintaining the common property and common assets of the strata corporation for the benefit of the owners.”⁴⁸ Ownership of common property and common assets is in the hands of the strata-lot owners, collectively.⁴⁹ The membership of the strata corporation is made up of “the owners of the strata lots in the strata”.

43. See, below, at 28–31.

44. *Supra* note 5, s 1 (1) “common asset.”

45. *Ibid*, s 1 (1) “common asset.”

46. *Ibid*, s 2 (1) (a).

47. See Ontario Law Reform Commission, *supra* note 23 at 3.

48. *Supra* note 5, s 3.

49. See *ibid*, s 66. The act doesn’t allow the link between ownership of a strata lot and ownership of a share in the common property to be broken. See *ibid*, s 251 (2) (“An owner must not deal with the owner’s share in the common property and common assets of the strata corporation separately from the owner’s strata lot except as expressly allowed by this Act.”).

ta plan.”⁵⁰ The strata corporation is the means for coordinating these owners to make effective and timely collective decisions.

The Fundamentals of Strata-Corporation Governance

Bylaws and rules

A strata corporation is required to have bylaws.⁵¹ Bylaws are a third-order set of laws to govern strata properties, ranking in priority below the act and its regulations.⁵² That said, for many issues, the “bylaws, more than any other document, direct the conduct of owners, tenants and occupants” and visitors.⁵³

By default, the legislation provides strata corporations with a set of standard bylaws.⁵⁴ But strata corporations are free to amend these standard bylaws or to create their own bylaws, so long as these bylaw amendments are approved by a 3/4 vote, are filed in the land title office, and do not conflict with the *Strata Property Act*, the *Strata Property Regulation*, or any other enactment or law.⁵⁵

Bylaws may address the following topics:

- “the control, management, maintenance, use and enjoyment of the strata lots, common property and common assets of the strata corporation”;⁵⁶
- “the administration of the strata corporation.”⁵⁷

50. *Ibid*, s 2 (1) (b).

51. See *ibid*, s 119 (1).

52. See *ibid*, s 121.

53. Murray, *supra* note 38 at 1.1.2.

54. See *supra* note 5, s 120.

55. See *ibid*, ss 126–28 (rules on bylaw amendment), 120 (1) (filing amendments in the land title office), 121 (unenforceable bylaws). On the last point, in addition to being unenforceable due to a conflict with an enactment or a law, a bylaw is unenforceable to the extent it “destroys or modifies” one of the easements for support, services, or shelter created under the act or “prohibits or restricts the right of an owner of a strata lot to freely sell, lease, mortgage or otherwise dispose of the strata lot or an interest in the strata lot” (*ibid*, s 121 (1) (b)–(c)). Of course, there are exceptions to the last point, which allow a strata corporation to put in place rental restrictions, restrictions on the sale of a strata lot, or age restrictions, all of which must conform strictly to detailed requirements contained in the act (see *ibid*, s 121 (2)).

56. *Ibid*, s 119 (2).

Unlike bylaws, rules are optional for a strata corporation. Rules are also more limited in scope than bylaws, as they may only govern “the use, safety and condition of the common property and common assets.”⁵⁸ Rules can’t be used to govern strata lots or to address the administration of a strata corporation.

Annual general meetings and special general meetings

The act requires many strata-corporation decisions to be made by the owners collectively. These decisions are typically identified as ones calling for a “resolution” as evidence of the decision. Resolutions are considered and either adopted or rejected at general meetings of the strata corporation.

Strata corporations are required to have at least one general meeting a year—called, appropriately, an annual general meeting.⁵⁹ The standard bylaws contain the order of business for the annual general meeting’s agenda.⁶⁰ Strata corporations may also have any number of special general meetings.⁶¹

The act contains a detailed and exacting set of provisions on the calling and conduct of general meetings.⁶² For the purposes of this discussion, it’s only necessary to take some notice of how the act deals with voting.

Votes are ultimately how decisions at general meetings get made. The basic position is majority rule—what the act calls *majority vote*.⁶³ A resolution passed by a majority vote is one that was approved by more than half of the votes cast by owners—or

57. *Ibid*, s 119 (2).

58. See *ibid*, s 125.

59. See *ibid*, s 40. There is an exception to this requirement: if all eligible voters agree, they may consent in writing to the main business of the meeting (namely passing a budget and electing a strata council) and may waive, each by a written document, the holding of an annual general meeting (see *ibid*, s 41).

60. See *ibid*, Schedule of Standard Bylaws, s 28.

61. See *ibid*, s 42.

62. See *ibid*, ss 45–50, 53–58. See also *Report on Terminating a Strata*, *supra* note 9 at 63–71; Gerry Fanaken, *Understanding the Condominium Concept: An Insightful Guide to the Strata Property Act* (Coquitlam, BC: Paige Condominium Services, 2013) at 36–48, 52–55; Mangan, *supra* note 4 at 101–114; *British Columbia Strata Property Practice Manual*, *supra* note 2 at §§ 7.37–7.76.

63. See *supra* note 5, s 1 (1) “majority vote” (“means a vote in favour of a resolution by more than 1/2 of the votes cast by eligible voters who are present in person or by proxy at the time the vote is taken and who have not abstained from voting”).

their proxyholders, if there are any—at the general meeting.⁶⁴ In other words, the question is decided by the majority of owners (and proxyholders) present at the meeting and not abstaining from voting.

Some decisions require approval by more than a majority of voters. The most common form of this kind of approval is what the act calls a *3/4 vote*.⁶⁵ A resolution is passed by a *3/4 vote* when at least 75 percent of the votes cast at a general meeting are in favour of it.⁶⁶ In certain exceptional cases, the act demands that a resolution be supported by a *unanimous vote* in order for it to be approved.⁶⁷ A resolution only meets this threshold when *all* strata-lot owners vote for it. So, unlike resolutions passed by a majority vote or a *3/4 vote*, a resolution can't be passed by a unanimous vote if it is supported just by all the owners who turn up to the general meeting and vote for it if there are other owners who don't attend the meeting (in person or by proxy) or who abstain from voting. Finally, if the vote is on what the act calls a "winding-up resolution"⁶⁸ (to terminate the strata—that is, the cancel the strata plan

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64. The act doesn't actually refer to *owners* voting; its term is *eligible voters*. This term reflects two concerns: (1) sometimes an owner's vote for a strata lot may be exercised by someone other than an owner, such as a tenant (see *ibid*, s 54 (b)), a mortgagee (see *ibid*, s 54 (c)), a parent, guardian, or other representative (see *ibid*, s 55), or a court-appointed voter (see *ibid*, s 58); and (2) in some cases, an owner may lose the right to vote if the owner is in default of certain payments owing to the strata corporation and the strata corporation is thereby entitled to file a lien against that owner's strata lot (see *ibid*, ss 53 (2), 116 (1)). These are all exceptional cases, so for brevity's sake the text will simply refer to owners voting.
65. See *ibid*, s 1 (1) "3/4 vote" ("means a vote in favour of a resolution by at least 3/4 of the votes cast by eligible voters who are present in person or by proxy at the time the vote is taken and who have not abstained from voting").
66. A special rule comes into play if "a resolution required to be passed by a 3/4 vote is passed at an annual or special general meeting by persons holding less than 50% of the strata corporation's votes" (*ibid*, s 51 (1)). Under this rule, "[w]ithin the one week following the vote, persons holding at least 25% of the strata corporation's votes may, by written demand, require that the strata corporation hold a special general meeting to reconsider the resolution" (*ibid*, s 51 (3)). If that special general meeting attracts a quorum of owners, and if the resolution is not passed again by a 3/4 vote at that meeting, then the strata corporation may not implement the resolution (see *ibid*, s 51 (10)).
67. See *ibid*, s 1 (1) "unanimous vote" ("means a vote in favour of a resolution by all the votes of all the eligible voters"). Transactions that must be authorized by a resolution passed by a unanimous vote are the major focus of chapter 5, which deals with fundamental changes. See, below, at 81–130.
68. *Ibid*, s 1 (1) "winding-up resolution" ("means a resolution referred to in (a) section 272 (1), or (b) section 277 (1).").
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and wind up the strata corporation under part 16),⁶⁹ then it may be passed by an 80-percent vote.⁷⁰

The strata council

A strata corporation must have a strata council.⁷¹ The strata council is elected at each annual general meeting, with its members usually coming from the strata-lot owners.⁷²

The strata council has been described as being “effectively a board of directors”⁷³ and “somewhat analogous to a fourth level of government.”⁷⁴ These descriptions reflect the act’s basic position, which is that the “powers and duties of the strata corporation must be exercised and performed by a [strata] council.”⁷⁵ As a rule of thumb, this means that the strata council has the authority to make decisions respecting the strata corporation, except for those decisions where the act calls for a resolution at a general meeting.⁷⁶

Budgets and funds

The act requires the strata corporation to “establish,” and the strata-lot owners to “contribute, by means of strata fees,” to the following two funds:

69. See *ibid*, ss 272–89.

70. See *ibid*, s 1 (1) “80% vote” (“means a vote in favour of a resolution by at least 80% of the votes of all the eligible voters”).

71. See *Strata Property Act*, *ibid*, s 25.

72. See *ibid*, s 28 (1). While strata-council members are in fact drawn overwhelmingly from the ranks of owners, the legislation actually allows three groups presumptively to be strata-council members: (1) owners; (2) individuals who represent corporate owners; and (3) tenants who have been assigned an owner’s right to vote (see *ibid*, s 28 (1)). Further, the act allows strata corporations to adopt bylaws that allow other classes of people to be strata-council members (see *ibid*, s 28 (2)).

73. Mangan, *supra* note 4 at 39.

74. Fanaken, *supra* note 62 at 21.

75. *Supra* note 5, s 4.

76. See Murray, *supra* note 38 at 1.1.4 (“Where the Act does not reference a vote by the owners . . . the activity or duty may be performed by the strata council without input from the owners. However, where the Act requires a vote of the owners, the decision to be made is not one for the strata council alone and can only be made with the approval of the owners based on the voting threshold set out in that section.”).

- “an operating fund for common expenses that (i) usually occur either once a year or more often than once a year, or (ii) are necessary to obtain a depreciation report”;⁷⁷ and
- “a contingency reserve fund for common expenses that usually occur less often than once a year or that do not usually occur.”⁷⁸

The act addresses the establishment of these funds, raising of their contributions, expenditures from them, and accounting for those expenditures.⁷⁹ At the centre of these functions is the strata corporation’s annual budget.⁸⁰ Among other things, the annual budget must contain “the estimated expenditures out of the operating fund, itemized by category of expenditure; the total of all contributions to the operating fund; the total of all contributions to the contingency reserve fund; each strata lot’s monthly contribution to the operating fund; [and] each strata lot’s monthly contribution to the contingency reserve fund.”⁸¹

Common Expenses

Many of the decisions that a strata corporation has to make concern spending money to pay for expenses. The act makes the strata-lot owners collectively responsible for what it calls *common expenses*, which it defines as expenses

- relating to the common property and common assets of the strata corporation, or
- required to meet any other purpose or obligation of the strata corporation.⁸²

Common expenses often relate to the first bullet point and are, in effect, the flip side of owning property in common. The strata corporation has a legal obligation to “repair and maintain common property and common assets.”⁸³

Although the strata corporation is responsible for common expenses,⁸⁴ paying for repairs—as for all common expenses—ultimately comes from contributions from

77. *Supra* note 5, s 92 (a).

78. *Ibid*, s 92 (b).

79. See *ibid*, ss 92, 93, 95–100, 103–109.

80. See *ibid*, s 103.

81. *Strata Property Regulation*, *supra* note 6, s 6.6 (1) (c)–(g).

82. *Supra* note 5, s 1 (1) “common expenses.”

83. *Ibid*, s 72 (1). See, below, at 21–24 (further discussion of the duty to repair and maintain property).

strata-lot owners. How these contributions are determined leads to consideration of one of the act's foundational concepts, unit entitlement.

Unit Entitlement

What is unit entitlement and how is it used?

At bottom, unit entitlement is a number. Each strata lot in a strata property is assigned its own unit-entitlement number.

The act uses unit entitlement in a way that ties this concept into one of the defining characteristics of a strata. This defining characteristic is the unique strata property-ownership model, which combines individual ownership of strata lots with shared ownership, among strata-lot owners, of a strata's common property and common assets, and shared responsibility for the debts and liabilities of the strata corporation.

Specifically, unit entitlement is used in "calculations" that "determine" each strata lot's share of:

- common property;
- common assets;
- common expenses; and
- liabilities of the strata corporation.⁸⁵

How is unit entitlement determined?

The act has a detailed set of rules on how to determine the unit entitlement of a strata lot. Which rules apply in a given case depends on (1) the use of the strata lot and (2) the kind of strata plan at issue.

The act distinguishes between residential and nonresidential uses, and contains a special rule for mixed-use stratas. The methods for determining the unit entitlement of a strata lot are:

84. See *supra* note 5, s 91.

85. *Ibid*, s 1 (1). Some jurisdictions go even further than British Columbia and use unit entitlement to determine a strata lot's voting rights and its share of residual property after termination.

- **for residential strata lots:** one of (a) the habitable area of the strata lot, (b) a whole number that is the same for all residential strata lots, or (c) a number that “allocates a fair portion of the common expenses to the owner of the strata lot,” in the opinion of the superintendent of real estate, who must approve any use of option (c);⁸⁶
- **for nonresidential strata lots:** one of (a) the total area of the strata lot, (b) a whole number that is the same for all nonresidential strata lots, or (c) a number that “allocates a fair portion of the common expenses to the owner of the strata lot,” in the opinion of the superintendent of real estate, who must approve any use of option (c);⁸⁷
- **for mixed-use stratas:** “[i]f the strata plan consists of both residential and nonresidential strata lots,” then unit entitlement “must be approved by the superintendent as fairly distributing the common expenses between the owners of the residential strata lots and the owners of the nonresidential strata lots.”⁸⁸

For residential and nonresidential strata lots, in most cases unit entitlement is determined using option (a). In effect, this means that the size of the strata lot determines its unit entitlement. It is slightly more complicated than that, because the act relies on two different standards for determining the size of a strata lot.

For residential strata lots, the size of a strata lot is determined by measuring its *habitable area*. This is a defined term,⁸⁹ which effectively limits unit entitlement to living areas in a strata lot, excluding things like “patios, balconies, garages, parking stalls or storage areas other than closet space.”⁹⁰ For nonresidential strata lots, size is determined by the *total area* of the strata lot.⁹¹

In both cases, option (a) requires unit entitlement to be “determined by a British Columbia land surveyor.”⁹²

86. *Ibid*, s 246 (3) (a).

87. *Ibid*, s 246 (3) (b).

88. *Ibid*, s 246 (5).

89. See *ibid*, s 246 (4). See also *Barrett v The Owners, Strata Plan LMS3265*, 2017 BCCA 414 [*Barrett*].

90. *Strata Property Regulation*, *supra* note 6, s 14.2.

91. Total area isn’t a defined term; it simply takes its everyday meaning. See *British Columbia Strata Property Practice Manual*, *supra* note 2 at § 3.39 (“‘total area’ includes all of those areas listed as excluded from ‘habitable area’ of a residential strata lot”).

92. *Supra* note 5, s 246 (3) (a), (b).

These rules only apply when the strata plan is a conventional (building) strata plan. For bare-land strata plans, a special rule comes into play.⁹³

When is unit entitlement determined and where is it found?

The unit entitlement of a strata lot must be determined at the outset of the stratification process. The act requires the “person applying to deposit a strata plan” to include the unit entitlements of the strata lots in the strata plan.⁹⁴ These unit-entitlement numbers are grouped together as a schedule to the strata plan, called the Schedule of Unit Entitlement.⁹⁵ This schedule is the definitive source of the unit entitlement of a strata lot in that strata plan.

The Duty to Repair and Maintain Property

Strata-property law has a detailed framework for allocating responsibility to repair and maintain property. This system depends on the interplay of legislation, regulations, and strata-corporation bylaws.

Common property and common assets

Even though the strata-lot owners collectively own the common property and common assets, the *Strata Property Act* makes the strata corporation responsible for their repair and maintenance. As the act provides, “the strata corporation must repair and maintain common property and common assets.”⁹⁶

The act goes on to set out two exceptions to this basic duty.⁹⁷ These exceptions allow a strata corporation to make a strata-lot owner responsible for the maintenance of common property. In both cases, the act requires the strata corporation to adopt a bylaw that makes the owner responsible for repair and maintenance to the common property.

93. *Ibid*, s 246 (6) (“The unit entitlement of a strata lot in a bare land strata plan must be (a) a whole number that is the same for all of the strata lots in the strata plan, or (b) a number that is approved by the superintendent and that in the superintendent’s opinion allocates a fair portion of the common expenses to the owner of the strata lot.”).

94. *Ibid*, s 246 (2).

95. See *ibid*, s 246 (2). The schedule is a prescribed form. See *Strata Property Regulation*, *supra* note 6, Form V.

96. *Supra* note 5, s 72 (1).

97. See *ibid*, s 72 (2).

The first case deals with “limited common property that the owner has a right to use.”⁹⁸ The standard bylaws that apply by default to a strata corporation give an example of how responsibility to repair and maintain limited common property may be divided between the strata corporation and a strata-lot owner who has the right to use the limited common property. The standard bylaws provide, as a general proposition, that “[a]n owner who has the use of limited common property must repair and maintain it, except for repair and maintenance that is the responsibility of the strata corporation under these bylaws.”⁹⁹

The bylaws go on to deal with the exception, by providing that the strata corporation must repair and maintain limited common property in two defined circumstances. The first circumstance concerns the frequency of the repair or maintenance. If it’s repairs or maintenance that “in the ordinary course of events occurs less often than once a year,” then it’s the strata corporation’s responsibility to carry it out.¹⁰⁰ The second circumstance concerns the type of property that must be repaired or maintained. The strata corporation must repair and maintain limited common property in all cases (“no matter how often the repair or maintenance ordinarily occurs”) if the property is any of the following:

- the structure of a building;
- the exterior of a building;
- chimneys, stairs, balconies and other things attached to the exterior of a building;
- doors, windows and skylights on the exterior of a building or that front on the common property;
- fences, railings and similar structures that enclose patios, balconies and yards.¹⁰¹

Because this list is contained in a bylaw it can be amended by a strata corporation.

The second case involves “common property other than limited common property.”¹⁰² Similar to the first case, for the second case the legislation says that a strata corporation may assign the responsibility to repair and maintain such common property to a strata-lot owner if the strata corporation is enabled to do so by a bylaw. But the legislation also attaches an important condition to the second case. It

98. *Ibid*, s 72 (2) (a).

99. *Ibid*, Schedule of Standard Bylaws, s 2 (2).

100. *Ibid*, Schedule of Standard Bylaws, s 8 (c) (i).

101. *Ibid*, Schedule of Standard Bylaws, s 8 (c) (ii).

102. *Ibid*, s 72 (2) (b).

provides that the strata corporation may adopt such a bylaw for common property other than limited common property “only if [the common property is] identified in the regulations and subject to prescribed restrictions.”¹⁰³ In practice, this condition has turned the second case into a dead letter. This is because the necessary enabling regulation has never been adopted.

Strata lots

The basic presumption of strata-property law is that strata-lot owners are responsible to repair and maintain their strata lots. This presumption flows from their ownership interest in the strata lots. But the *Strata Property Act* allows for this presumption to be displaced. It provides that a “strata corporation may, by bylaw, take responsibility for the repair and maintenance of specified portions of a strata lot.”¹⁰⁴

The standard bylaws that apply by default to a strata corporation give an example of the extent to which a strata corporation may be responsible to repair and maintain a strata lot. As a starting place, the standard bylaws provide that “[a]n owner must repair and maintain the owner’s strata lot, except for repair and maintenance that is the responsibility of the strata corporation under these bylaws.”¹⁰⁵ The bylaws go on to identify specified portions of a strata lot that a strata corporation must repair and maintain. They provide that a strata corporation must repair and maintain a strata lot—so long as that strata lot is “in a strata plan that is not a bare land strata plan”¹⁰⁶—but that duty “is restricted to” the following portions of a strata lot:

- the structure of a building,
- the exterior of a building,
- chimneys, stairs, balconies and other things attached to the exterior of a building,
- doors, windows and skylights on the exterior of a building or that front on the common property, and
- fences, railings and similar structures that enclose patios, balconies and yards.¹⁰⁷

Because this list is contained in a bylaw it can be amended by a strata corporation.

103. *Ibid*, s 72 (2) (b).

104. *Ibid*, s 72 (3).

105. *Ibid*, Schedule of Standard Bylaws, s 2 (1).

106. *Ibid*, Schedule of Standard Bylaws, s 8 (d).

107. *Ibid*, Schedule of Standard Bylaws, s 8 (d).

Dispute Resolution and the Civil Resolution Tribunal

Finally, resolution of disputes is an important part of strata-property law. In British Columbia it is particularly important because the province has recently embarked on a new approach to strata dispute resolution.

The centrepiece of this new approach is the Civil Resolution Tribunal. The tribunal's mandate is "to provide dispute resolution services in relation to matters that are within its authority, in a manner that":

- is accessible, speedy, economical, informal and flexible,
- applies principles of law and fairness, and recognizes any relationships between parties to a dispute that will likely continue after the tribunal proceeding is concluded,
- uses electronic communication tools to facilitate resolution of disputes brought to the tribunal, and
- accommodates, so far as the tribunal considers reasonably practicable, the diversity of circumstances of the persons using the services of the tribunal.¹⁰⁸

Since its inception, the tribunal's authority has extended to most kinds of strata disputes.¹⁰⁹ The tribunal has been accepting strata-dispute claims since 2016.

But it's important to note that when disputes arise in connection the subjects of this report they will tend to relate to issues that aren't within the scope of the Civil Resolution Tribunal.¹¹⁰ The British Columbia Supreme Court is much more likely to be the decision-maker in the kinds of disputes that relate to this report.

108. *Civil Resolution Tribunal Act*, *supra* note 31, s 2 (2). See also *The Owners, Strata Plan BCS 1589 v Nacht*, 2018 BCSC 455 at para 9, Funt J (description of the Civil Resolution Tribunal).

109. See *Civil Resolution Tribunal Act*, *supra* note 31, s 3.6.

110. See *ibid*, s 3.6 (2).

Chapter 3. Common Property

Scope of this Chapter

The *Strata Property Act* has a part (part 5) dedicated to “property.”¹¹¹ The part contains the following divisions:

- general property matters;
- limited common property and exclusive use of common property;
- property acquisition and disposal;
- work orders;
- builders liens and other charges.

As this list makes plain, part 5 addresses common property, but its reach is actually much broader, bringing in all sorts of other topics with a bearing on property.

Some commentators have said that more than part 5 needs to be considered when someone is trying to understand a common-property issue. As a leading practice guide advises,¹¹² lawyers and others trying to get a handle on common-property issues should become familiar with the following other parts of the act:

- part 1—definitions and interpretation (where the definition of *common property* is located);
- part 2—the strata corporation (sets out the fundamental responsibility of strata corporation to manage and maintain common property);
- part 7—bylaws and rules (and the bylaws themselves contain “important provisions governing the use, alteration, and maintenance of common property”);¹¹³

111. See *supra* note 5, ss 66–90.

112. See *British Columbia Strata Property Practice Manual*, *supra* note 2 at § 4.1.

113. *Ibid.*

- part 14—land titles (“regulates the manner in which dealings with common property and assets of the strata corporation are registered under the *Land Title Act*”);¹¹⁴
- part 15—strata plan amendment and amalgamation (relevant for some designations of limited common property and transactions involving common property).

While this chapter touches on some of the provisions in part 5 and these other listed parts of the act, its goal isn’t to set out a comprehensive narrative of them. Instead, the chapter focuses on the law-reform issues that the committee has identified for common property. These selected issues may be grouped into the following subjects:

- defining common property;
- responsibility to repair and maintain common property;
- transactions involving common property;
- parking stalls and storage lockers.

Finally, readers should note that there is some inevitable overlap between these issues for reform and the issues considered in the next chapter (which deals with land titles).

Background Information on Common Property

Definition of “common property”

Common property has been called “a unique feature of the strata concept.”¹¹⁵ There is really nothing else like it in real-property law. Its unique nature is reflected in its complex statutory definition.

The *Strata Property Act* essentially takes a two-pronged approach to defining *common property*.¹¹⁶

The first prong classifies everything shown on a strata plan that isn’t part of a strata lot as common property: “‘common property’ means (a) that part of the land and buildings shown on a strata plan that is not part of a strata lot.” This prong of the

114. *Ibid.*

115. *Ibid.*

116. See *supra* note 5, s 1 (1) “common property.”

definition is fairly easy to grasp in the abstract. Examples of things that could fit this definition include “hallways, stairwells, roofs, balconies, attics, elevators, patios, parking stalls,” and even the underlying land in a building strata plan (but not in a bare-land strata plan).¹¹⁷

The second prong of the definition tackles cases in which it would be difficult to apply a simple and clear-cut distinction between being part of a strata lot or part of the common property. It is aimed at a long list of specific building components and systems for services (“pipes, wires, cables, chutes, ducts and other facilities for the passage or provision of water, sewage, drainage, gas, oil, electricity, telephone, radio, television, garbage, heating and cooling systems, or other similar services”).¹¹⁸ These things may be common property by definition, depending on the location of the thing or the usage of the thing.¹¹⁹ And it’s at this point that the second prong of the act’s definition of common property splits into two branches.

The first branch deals with location. It’s concerned with boundary cases. The definition focuses attention on whether the component or system listed earlier is located “within a floor, wall or ceiling” that itself forms a boundary:

- between a strata lot and another strata lot,
- between a strata lot and the common property, or
- between a strata lot or common property and another parcel of land.¹²⁰

The effect of this branch of the definition is to bring these boundary cases within the scope of common property.

117. *British Columbia Strata Property Practice Manual*, *supra* note 2 at § 4.2. Regarding the underlying land in a bare-land strata plan, “parts of the land are divided into separate strata lots, and the strata plan will not typically show the buildings on each strata lot. In this case, the entire building, whether constructed by the owner developer or by the strata lot owner, on the bare land strata lot (including the exterior portions of the building and the interior pipes, wiring, and other mechanical systems) will form part of the strata lot. The common property will be limited to access roads, sidewalks, and recreational facilities shown on the strata plan, as well as any of the underground services and the physical plant if capable of servicing more than one strata lot.” (*Ibid.*)

118. *Strata Property Act*, *supra* note 5, s 1 (1) “common property.”

119. See *British Columbia Strata Property Practice Manual*, *supra* note 2 at § 4.2 (“Whether a particular part of a system or service, such as a wire, pipe, or duct, constitutes part of the common property is determined by the location of the part or by the usage of the part.”).

120. *Supra* note 5, s 1 (1) “common property.”

The second branch deals with use. Even if any of the things listed above (pipes, wires, etc.) finds itself “wholly or partially within a strata lot,” it is still within the definition of common property if it is “capable of being and intended to be used in connection with the enjoyment of another strata lot or the common property.” Court decisions considering this branch of the definition have concluded that if the component or system is “connected” to other components or systems that service other strata lots¹²¹ or is otherwise part of an “integrated whole,”¹²² then it should be considered common property. As a leading practice guide has noted, this approach “leave[s] very few such facilities within a condominium outside of the ‘common property’ of that complex.”¹²³

Rights to use, ownership of, and administration of common property

Common property has been seen as “a frequent flashpoint for disputes between strata lot owners and strata corporations.”¹²⁴ These disputes tend to revolve around either the responsibility to repair and maintain or the right to use the property.¹²⁵ The responsibility to repair and maintain will be discussed later, in conjunction with a pair of issues for reform that relate to it.

As for rights to use common property, the starting place is to look at ownership of common property. The act provides that “[a]n owner owns the common property and common assets of the strata corporation as a tenant in common in a share equal to the unit entitlement of the owner’s strata lot divided by the total unit entitlement of all the strata lots.”¹²⁶ This ownership interest presumptively gives the owners the

121. *Taychuk v Owners, Strata Plan LMS 744*, 2002 BCSC 1638 at para 28, Gray J [*Taychuk*].

122. *Fudge v Owners, Strata Plan NW2636*, 2012 BCPC 409 at para 48, Woods Prov Ct J [*Fudge*].

123. *British Columbia Strata Property Practice Manual*, *supra* note 2 at § 4.2.

124. *Ibid* at § 4.1.

125. See *ibid*. See also Mangan, *supra* note 4 at 288.

126. *Supra* note 5, s 66. As may be seen at work in this section, the act often pairs together the terms *common property* and *common assets*. *Common assets* is a defined term, meaning “(a) personal property held by or on behalf of a strata corporation, and (b) land held in the name of or on behalf of a strata corporation, that is (i) not shown on the strata plan, or (ii) shown as a strata lot on the strata plan” (*ibid*, s 1 (1) “common asset”). See also, above, at 19–21 (general discussion of unit entitlement).

rights to enjoy and use the common property,¹²⁷ subject to any limits placed on those rights by the act, the regulation,¹²⁸ and the bylaws and rules.

But it must also be borne in mind that the act gives the strata corporation the legal responsibility “for managing and maintaining the common property and common assets of the strata corporation for the benefit of the owners.”¹²⁹ So, as a commentator has pointed out, “[t]he mere fact that a particular strata lot owner owns a fraction of the common property and the common assets does not give that owner the right to control, administer or use it.”¹³⁰ As this commentator elaborates, “it would be chaotic and risky to give every owner the keys to the mechanical service room, or the boiler room or the yard tractor.”¹³¹

These comments point to the balance at play in the concept of common property. While it makes “perfect sense”¹³² to deny owners the keys to the boiler room, it also makes sense to generally give owners free access to a common-property courtyard intended for their enjoyment.

Definition and nature of limited common property

The act also allows stratas to tip that balance in some cases in favour of giving a strata-lot owner, or a group of strata-lot owners, enhanced rights to use common property. The most important of these enhanced rights is a designation of limited common property. As the act defines it, *limited common property* is “common property designated for the *exclusive use* of the owners of one or more strata lots.”¹³³

Court cases have considered the nature of a strata-lot owner’s interest in a designation of limited common property. A leading case has described it “as a special category of property over which the unit owner has a substantial degree of control and something approaching a beneficial interest.”¹³⁴ The key word in this passage might

127. See Mangan, *supra* note 4 at 274 (“Every owner is entitled to use the common property, unless its use is otherwise restricted to certain persons.”).

128. See *supra* note 6.

129. *Supra* note 5, s 3.

130. Fanaken, *supra* note 62 at 57.

131. *Ibid.*

132. *Ibid.*

133. *Supra* note 5, s 1 (1) “limited common property” [emphasis added].

134. *Moure v The Owners, Strata Plan NW2099*, 2003 BCSC 1364 at para 22, Groberman J.

be *approaching*, as a later case has emphasized the balance between the owner benefiting from a designation and the other strata-lot owners:

It is clear, however, that the unit holder is not the beneficial owner of the limited common property. The other owners retain more than simple legal title. They retain a bundle of rights and responsibilities as set out, *inter alia*, in ss. 71–75 of the *Strata Property Act*. This is consistent with the communal nature of common property.¹³⁵

A commentator has concluded that, on the state of the case law, “[a]n owner’s interest in [limited common property] is not easily defined within the parameters of traditional property law.”¹³⁶

How to designate common property as limited common property

The act provides three ways to designate limited common property.¹³⁷ The first two involve the strata plan. First, the owner-developer may designate limited common property on the strata plan “when it is deposited in the land title office”¹³⁸ or by amending the strata plan before the first annual general meeting of the strata corporation using a special procedure just for parking stalls.¹³⁹ Second, the strata corporation may amend the strata plan to designate limited common property.¹⁴⁰ (This requires, among other things, approval by a resolution passed by a unanimous vote.)¹⁴¹ Third, a strata corporation may designate limited common property by a resolution passed by a 3/4 vote.¹⁴²

A designation of limited common property in the strata plan is more durable than a designation effected by a 3/4-vote resolution. Removing a limited-common-property

135. *Yestel v New Westminster (City of)*, 2012 BCSC 925 at para 28, Master Muir.

136. *British Columbia Strata Property Practice Manual*, *supra* note 2 at § 4.4.

137. See *supra* note 5, s 73.

138. *Ibid*, s 73 (a) (i).

139. See *ibid*, s 258. See also, below, at 47–51 (discussion of options for reform and tentative recommendations regarding section 258).

140. See *supra* note 5, s 73 (b). See also, below, at 94–97 (consideration of options for reform and tentative recommendations to reform amending a strata plan to designate limited common property and to remove the designation).

141. See *supra* note 5, s 257. See also, below, at 94–96 (consideration of tentative recommendation to lower voting threshold to an 80-percent vote for amending a strata plan to designate limited common property).

142. See *supra* note 5, ss 73 (c), 74.

designation from a strata plan entails amending the strata plan,¹⁴³ which requires clearing the high hurdle of obtaining a resolution passed by a unanimous vote.¹⁴⁴ Removing a limited-common-property designation effected by a resolution passed by a 3/4 vote, on the other hand, basically involves passing a 3/4 vote resolution calling for the removal of the designation.¹⁴⁵

Short-term exclusive use of common property

The act allows a strata corporation other ways to give strata-lot owners rights in common property, short of a designation of limited common property. A strata corporation “may give an owner or tenant permission to exclusively use, or a special privilege in relation to, common assets or common property that is not designated as limited common property.”¹⁴⁶ This grant may be provided on conditions set by the strata corporation. Grants of short-term exclusive use may be made for a term of up to one year, though that term may be renewed. They may be cancelled on “reasonable notice” to the owner or tenant.¹⁴⁷

Issues for Reform—Defining Common Property

Introduction

BCLI first heard concerns about the definition of *common property* during the consultations for phase one of this project.¹⁴⁸ At that time, the issues raised tended to be broad and general in scope. Consultation participants pointed to “uncertainties” in the legislation and there was a desire for “clarification” of some aspects of the definition.¹⁴⁹ In particular, one consultation participant observed that the question “where

143. See *ibid*, s 75 (1).

144. See *ibid*, s 257. See also, below, at 96–97 (consideration of tentative recommendation to retain unanimous-vote voting threshold for amending a strata plan to remove a designation of limited common property).

145. See *Strata Property Act*, *supra* note 5, s 75 (2). Note that the 3/4-vote resolution “does not have effect until it is filed in the land title office” (*ibid*, s 75 (3)).

146. *Ibid*, s 76 (1) (note that this provision is qualified as being subject to the procedure for making a significant change in the use or appearance of common property, which is set out in section 71). See also *Zanatta v Kedgley*, 2018 BCCRT 140 [*Zanatta*], leave to appeal to BCSC refused, 2018 BCSC 1969; *Hales v The Owners, Strata Plan NW 2924*, 2018 BCCRT 91 (examples of recent decisions of the Civil Resolution Tribunal involving short-term exclusive use of common property).

147. *Ibid*, s 76 (4).

148. See *Report on Strata Property Law: Phase One*, *supra* note 7 at 23.

149. *Ibid*.

does common property begin and end” can often be difficult to answer.¹⁵⁰ A commentator has raised a similar concern.¹⁵¹

Should the definition of “common property” be amended?

Brief description of the issue

The committee began its consideration of this issue by narrowing its (potentially) wide-open scope. In practice, many of the challenges in applying the definition of common property relate to the second branch of the second prong of the definition, which classifies specified building components as common property based on their use. The committee decided to focus its attention on this aspect of the definition. Should the definition of *common property* be revised to clarify its intent in these difficult cases?

Discussion of options for reform

There is still potentially a range of options at play even in a focused consideration of this issue. This portion of the definition could be simplified by reducing its scope. Alternatively, its language could be bolstered by the addition of more-concrete terms. Finally, the legislation’s status quo could just be retained.

One quality about the definition that stands out in even a causal reading is its complexity. The definition has evolved over the years, adding detail with each iteration. The first prong of the definition (broadly defining common property as anything that isn’t part of a strata lot) goes back to the very beginning of strata-property law in British Columbia.¹⁵² The first branch of the second prong (pipes, wires, etc. located in a boundary) first appeared in 1977.¹⁵³ The second branch (pipes, wires, etc. used

150. *Ibid.*

151. See *British Columbia Strata Property Practice Manual*, *supra* note 2 at § 3.28 (“The interface between components located inside and outside a strata lot can pose some challenges in determining where the common property elements begin and end.”).

152. See *Strata Titles Act*, *supra* note 25, s 2 “common property” (“means so much of the land for the time being comprised in a strata plan that is not comprised in any strata lot shown in the plan”).

153. See *Strata Titles Amendment Act, 1977 (No. 2)*, *supra* note 26, s 1 (f) (“‘common property’ means so much of the land and buildings comprised in a strata plan that is not comprised in a strata lot shown in the strata plan, and includes pipes, wires, cables, chutes, ducts, or other facilities for the passage or provision of water, sewage, drainage, gas, oil, electricity, telephone, radio, television services, garbage, heating and cooling systems and other services contained within a floor, wall, or ceiling of a building shown on the strata plan, where the centre of the floor, wall, or ceiling forms the common boundary of a strata lot with another strata lot or with common property”).

or capable of being used in connection with enjoyment of another strata lot or common property) was added when the *Strata Property Act* was enacted.

As noted, the concerns about clarifying the definition of common property to make it more certain where common property begins and ends appear to involve the second branch of the second prong of the definition. This is the newest part of the definition, and it's also the part that has attracted some judicial consideration.¹⁵⁴ While the strata-property sector varies across the country and direct comparisons between British Columbia and other jurisdictions have to be treated with caution, it is noteworthy that this province's definition of *common property* is far more detailed and complex than any analogous definition. All the other provinces and territories simply define the term by using a variation on the first prong of British Columbia's definition, avoiding the wordy second prong.¹⁵⁵ An argument could be made that this simpler approach is the better approach. It would make the act easier to read and follow, and would avoid a common problem with legislative definitions in which piling words on top of words ends up complicating rather than clarifying the legal issues the definition is meant to address.¹⁵⁶

But another argument could be raised that simplifying the definition of *common property* won't do anything to address the real underlying problems. The definition

154. See *Taychuk, supra* note 121; *Fudge, supra* note 122.

155. See Alberta: *Condominium Property Act, supra* note 33, s 1 (1) (f) (“‘common property’ means so much of the parcel as is not comprised in a unit shown in a condominium plan, but does not include land shown on the condominium plan that has been provided for the purposes of roads, public utilities and reserve land under Part 17 of the *Municipal Government Act*”); Saskatchewan: *The Condominium Property Act, 1993, supra* note 33, s 2 (1) (h) (“‘common property’ means the part of the land and buildings included in a condominium plan that is not included in any unit shown in the condominium plan”); Manitoba: *The Condominium Act, supra* note 33, s 1 (1) “common elements” (“means all the property except for the units”); Ontario: *Condominium Act, 1998, supra* note 33, s 1 (1) “common elements” (“means all the property except the units”); New Brunswick: *Condominium Property Act, supra* note 33, s 1 (1) “common elements” (“means all the condominium property except the units”); Prince Edward Island: *Condominium Act, supra* note 33, s 1 (1) (e) (“‘common elements’ means all the property except the units”); Nova Scotia: *Condominium Act, supra* note 33, s 3 (1) (f) (“‘common elements’ means all the property except the units”); Newfoundland and Labrador: *Condominium Act, 2009, supra* note 33, s 2 (1) (e) (“‘common elements’ means the whole property with the exception of the units”); Yukon: *Condominium Act, RSY 2002, c 36, s 1* “common elements” (“means all the property except the units”); Northwest Territories and Nunavut: *Condominium Act, supra* note 33, s 1 (1) “common elements” (“means all the property except the units”).

156. See Pierre-André Côté, *The Interpretation of Legislation in Canada*, 4th ed, translated and revised by Steven Sacks (Toronto: Carswell, 2011) at 68 (“Definitions may be furnished to add a greater measure of precision but the opposite is often the result: “The more words there are, the more words there are about which doubts may be entertained.”) (quoting Lord Halsbury, *The Laws of England* (London: Butterworths, 1907) at ccxvi).

may have grown more detailed and complex because strata-property law has increasingly had to tackle more complicated situations. Reverting to a simpler definition would just mask the concerns raised by these complex situations. It wouldn't help practitioners who have to address the issues raised by complicated cases. The better approach, in this view, would be to craft a more detailed and concrete definition.

But it could be difficult to craft the kind of detailed legislative language that would take the grey areas out of the current definition. Those grey areas appear to result from having to apply a usage test that turns on case-by-case judgments. Further, adding to the definition could make it even more complicated to apply. It would create the possibility of further grey areas developing.

A final option for consideration would be to retain the status quo. The current definition is detailed and sophisticated. An argument could be made that it strikes the right balance. But retaining the status quo would leave any concerns about the definition of *common property* unaddressed.

The committee's recommendation for reform

The committee gave this issue extensive consideration. It considered both sweeping changes and targeted amendments to the definition's wording. But in the end it decided to propose retaining the status quo.

The committee understands that there has been criticism of the definition. The usage test, in particular, has developed through the language of the definition in the interpretations found in the case law and has proved to be a challenge to apply in practice. The committee is sympathetic to this challenge.

But the committee was given pause by the range of strata properties in British Columbia that would be affected by changing the definition of common property. For example, some strata properties have advanced fire-suppression equipment that is located wholly within a strata lot. Other strata properties offer extended-care services to older adults, which requires them to locate specialized facilities within strata lots. Under the current interpretation of the usage test, these types of property are more likely than not considered to be common property. The committee was wary of altering the definition of common property and inadvertently affecting property that is critical for health and public safety within certain strata properties.

The committee also wrestled with the problems that can arise from applying the definition of common property to pipes and plumbing systems. Disputes over repairs to this property commonly plague strata properties. The committee understands the

frustrations that can result when an owner lets a readily apparent problem persist, resulting in water leaks that damage other common property and strata lots. But the committee was reluctant to move from this expression of sympathy to a legal rule that would hold such strata responsible to repair and maintain pipes, even if they are located within a strata lot. In the committee's view, such a rule would end up creating more problems than it solved. The committee considered assigning legal responsibility to repair and maintain aspects of plumbing systems to individual strata-lot owners to be analogous to requiring owners to repair and maintain windows in a high rise. Experience before the advent of the *Strata Property Act* proved that, in the latter case, owners were unable or unwilling to do the necessary work. The committee was concerned that altering the definition of common property could create a replay of those earlier problems with windows and building exteriors for pipes and plumbing systems.

Finally, while the committee had some interest in simplifying the definition of common property, it ultimately decided that simplicity of expression had to yield to other considerations. British Columbia's strata-property sector is complex and sophisticated. A simple definition on paper is of little help if it fails to provide adequate guidance in practice. In the end, over-emphasizing simplicity in this area runs the risk of leading to more disputes in the Civil Resolution Tribunal and the courts.

A solid majority of consultation respondents supported the committee's approach to this issue.

The committee recommends:

1. *The Strata Property Act's definition of "common property" should not be amended.*

Should the definition of "limited common property" be amended?

Brief description of the issue

This issue arose as a consequence of the committee's consideration of the previous issue. While the act's definition of *limited common property*¹⁵⁷ appears to be clear on paper, it was noted that people—especially people without legal training—can struggle with one aspect of that definition. The problem consists in spelling out the relationship of limited common property to common property. Even though it has been well-established in the law that limited common property is a form of common

157. See *supra* note 5, s 1 (1) "limited common property" ("means common property designated for the exclusive use of the owners of one or more strata lots").

property, this point often seems to elude people in practice.¹⁵⁸ Should the definition of limited common property be clarified to emphasize this point?

Discussion of options for reform

Amending the definition would provide the opportunity to clarify what has apparently become a source of confusion in practice. This would have the advantage of decreasing frustration with applying the act. It might also eliminate a potential source of disputes within a strata property.

But it could be argued that an amendment isn't needed. As a legal matter, it's clear that limited common property is a subset of the broader category of common property. Amending the act's definition wouldn't change this result. An amendment wouldn't be guaranteed to solve what appears to be a problem of perception and interpretation. It might even open up new interpretative problems.

The committee's recommendation for reform

The committee favours addressing this practical concern with a legislative amendment. In the committee's view, the wording of the statutory definition is the source of confusion over the status of limited common property. This confusion can be productively addressed by amending the act's definition to underscore the point that limited common property is a form of common property. Such an amendment is unlikely to produce any untoward effects.

The vast majority of consultation respondents agreed with the committee's tentative recommendation on this issue for reform.

The committee recommends:

2. The Strata Property Act's definition of "limited common property" should be amended to read as follows: " 'limited common property' means a form of common property, designated for the exclusive use of the owners of one or more strata lots."

158. The committee received correspondence that noted confusion in applying the definition. See B Lynn Inouye, email message to Strata Property Law (Phase Two) Project Committee, 25 October 2017.

Issues for Reform—Transactions Involving Common Property

Introduction

The *Strata Property Act* has a raft of provisions dealing with transactions involving common property, including provisions addressing the following topics:

- change in use of common property;¹⁵⁹
- disposal of common property;¹⁶⁰
- subdivision of common property;¹⁶¹
- amending the strata plan to add a strata lot to common property;¹⁶²
- amending the strata plan to make common property into land held by the strata corporation;¹⁶³
- amending the strata plan to add land held by strata corporation to the common property.¹⁶⁴

Section 71, which deals with changes in use of common property, is the outlier on this list. Unlike the other provisions, it doesn't enable a transaction involving common property. But it should be borne in mind, because many such transactions will also come into the range of section 71, which must be addressed whenever a strata corporation plans to make a "significant change in the use or appearance of common property."¹⁶⁵

The other sections are weighted heavily toward addressing procedural requirements, approvals from eligible voters, and filings in the land title office. While the committee has reviewed these sections, in its view reform efforts shouldn't be aimed at a comprehensive overhaul of them. Instead, the committee has decided to focus

159. See *supra* note 5, s 71.

160. See *ibid*, s 80.

161. See *ibid*, s 253.

162. See *ibid*, s 263.

163. See *ibid*, s 265.

164. See *ibid*, s 266.

165. *Ibid*, s 71.

this part of the report on the area that it sees as creating the most pressing issues: leases.

As a starting place, note that two procedures are available for a lease of common property. Knowing which one to use turns on the length of the term of the proposed lease.

If the lease will be “for a term exceeding 3 years,”¹⁶⁶ then it is considered to be a subdivision of land.¹⁶⁷ This means that the following requirements from part 7 of the *Land Title Act* apply:

- a subdivision plan is required;¹⁶⁸
- the subdivision plan must be approved by an approving officer;¹⁶⁹
- the subdivision plan “must be signed by each owner of the land subdivided.”¹⁷⁰

But if the lease is for a term of three years or some lesser period, then it is classified as a “disposal of common property” under section 80.¹⁷¹ In this case, the strata corporation “must ensure that the following requirements are met”:¹⁷²

- a resolution approving the lease must be passed by a 3/4 vote;¹⁷³
- “holders of financial charges noted on the common property record must consent in writing to the proposed disposition unless in the registrar’s opin-

166. *Ibid*, s 253 (1) (b).

167. See *ibid*, s 253 (1).

168. See *supra* note 19, s 74. But the registrar may accept another method of describing the land in certain circumstances (see *ibid*, s 99).

169. See *ibid*, s 91 (1).

170. *Ibid*, s 97 (1). The *Land Title Act*’s definition of *owner* includes a registered owner of a charge (see *ibid*, s 1 (1) “owner”). But the *Land Title Act* also provides that “[t]he registrar may accept a plan that has not been signed by all the owners if, in the registrar’s opinion, the interests of the owners who have not signed are not affected by the deposit of the plan” (*ibid*, s 97 (3)).

171. See *Interpretation Act*, RSBC 1996, c 238, s 29 “dispose” (“means to transfer by any method and includes assign, give, sell, grant, charge, convey, bequeath, devise, *lease*, divest, release and agree to do any of those things” [emphasis added]).

172. See *Strata Property Act*, *supra* note 5, s 80 (2).

173. See *ibid*, s 80 (2) (a).

ion the interests of the persons who have not consented in writing are not adversely affected by the disposition”;¹⁷⁴

- “any document needed to effect the disposition must be executed by the strata corporation and delivered to the land title office accompanied by”¹⁷⁵
 - a Certificate of Strata Corporation certifying that the resolution referred to earlier has been passed and the document conforms to it;¹⁷⁶
 - the written consents of the holders of financial charges referred to earlier.¹⁷⁷

While these procedures are important, the pressing issues arising from leases of common property tend not to arise from them. Instead, the timing of entering into a lease has emerged as a key concern. The concern is that an owner-developer may use the time during the early existence of a strata property when it effectively dominates the strata corporation to enter into leases that may not be in the interests of later strata-lot owners.¹⁷⁸

There are existing provisions of the act that have a bearing on this problem. The act provides that the owner-developer must meet a defined standard of care¹⁷⁹ during the period when it is effectively in control of the strata corporation.¹⁸⁰ This standard expressly includes acting “with a view to the best interests of the strata corporation.”¹⁸¹ Further, the act places restrictions on the owner-developer’s contracting powers, though the restrictions only extend as far as contracts with “a person who is not at arm’s length to the owner developer.”¹⁸²

174. *Ibid*, s 80 (2) (b).

175. *Ibid*, s 80 (2) (c).

176. See *ibid*, s 80 (2) (c) (i).

177. See *ibid*, s 80 (2) (c) (ii).

178. See Fanaken, *supra* note 62 at 10.

179. See *supra* note 5, s 6 (1) (“In exercising the powers and performing the duties of a council, the owner developer must (a) act honestly and in good faith with a view to the best interests of the strata corporation, and (b) exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.”).

180. See *ibid*, s 5 (1) (“The owner developer must exercise the powers and perform the duties of a council from the time the strata corporation is established until a council is elected at the strata corporation’s first annual general meeting.”).

181. *Ibid*, s 6 (1) (a).

182. *Ibid*, s 10 (In the period after the first conveyance of a strata lot to a purchaser but before the first annual general meeting, no contract or transaction may be entered into by or on behalf of

Provisions in other legislation may also provide a remedy. The disclosure provisions in the *Real Estate Development Marketing Act* are often engaged in disputes over whether the owner-developer has acted in the strata corporation's best interests.¹⁸³

Should the Strata Property Act provide that a lease of a fixture that is common property or of a common asset entered into by the owner-developer may not exceed five years?

Brief description of the issue

Despite general provisions imposing duties and restrictions on owner-developers, there are still specific concerns about transactions involving common property. These concerns relate to long-term leases tying up a strata's common property (items such as enterphones and security cameras often figure as examples) after the owner-developer has left the scene. Sometimes, the concerns extend to service contracts entered into on the strata's behalf by the owner-developer. Other provinces have enacted legislation that reins in these transactions.¹⁸⁴ Should British Columbia

the strata corporation with either the owner developer or a person who is not at arm's length to the owner developer, unless the contract or transaction is approved by a resolution passed by a unanimous vote at a special general meeting.”).

183. See SBC 2004, c 41, ss 14–15.

184. See Alberta: *Condominium Property Act*, *supra* note 33, s 17.1 (“(1) Except as otherwise provided in section 17 and the regulations, a corporation may terminate an agreement within 12 months after the time at which its board first consists of directors who were elected when persons who were at arm's length from the developer owned or held units representing more than 50% of the total unit factors for all the units. (2) Subsection (1) applies despite any term to the contrary in the agreement to be terminated. (3) To terminate an agreement under this section, the corporation must give written notice of the termination date to the other party to the agreement at least 60 days, or any shorter period specified in the agreement, before the termination date. (4) Where a corporation terminates an agreement under this section, the corporation is not liable to the other party to the agreement by reason only of the termination of the agreement under this section.”); Manitoba: *The Condominium Act*, *supra* note 33, s 82 (“(1) A condominium corporation may, within 12 months after the turn-over meeting, terminate, without penalty, any of the following agreements entered into by the corporation before the turn-over meeting: (a) an agreement to provide goods and services to the condominium corporation on a continuing basis; (b) an agreement to provide facilities to the condominium corporation on a for-profit basis; (c) a commercial lease for parts of the common elements; (d) an insurance trust agreement. (2) Subsection (1) applies despite any term to the contrary in the agreement to be terminated. (3) To terminate an agreement referred to in subsection (1), the condominium corporation must give written notice of the termination date to the other party to the agreement at least 30 days, or any shorter period specified in the agreement, before that date.”); Ontario: *Condominium Act, 1998*, *supra* note 33, s 112 (“Subject to subsection (4), a corporation may, by resolution of the board within 12 months following the election of a new board at a meeting held in accordance

follow their lead and amend the *Strata Property Act* to directly address these concerns?

Discussion of options for reform

There is a range of options that could be considered in response to this issue, which would run from proposing a robust power for the incoming strata council to terminate leases entered into by the owner-developer to retaining the status quo.

Enacting legislation that would create an enhanced termination power for leases entered into by the owner-developer would directly address concerns raised about such leases binding strata corporations to unfavourable terms far into the future. It would also be a simpler mechanism to exercise than litigation over whether an owner-developer has failed in its duty to act in the best interests of the strata corporation.

But such an amendment would also have downsides. The main downside of a broadly framed termination power is that it would cast a chill over all contracts that the owner-developer would attempt to enter into on the strata corporation's behalf. Contracting parties could decide that the uncertainty created by such a power would make it not worth their while to enter into contracts with the owner-developer. Or they could insist on concessions to make up for the perceived loss of contractual cer-

with subsection 43 (1), terminate an agreement mentioned in subsection (2) that the corporation has entered into with a person other than another corporation before the election of the new board. (2) Subsection (1) applies to the following agreements: 1. An agreement for the provision of goods or services on a continuing basis. 2. An agreement for the provision of facilities to the corporation on other than a non-profit basis. 3. A lease of all or part of the common elements for business purposes. (3) Subsection (1) does not apply to a telecommunications agreement within the meaning of section 22. (4) To terminate an agreement, the board shall give at least 60 days notice in writing of the date of termination to the person with whom the corporation entered into the agreement.”); *Protecting Condominium Owners Act, 2015, supra* note 33, s 98 (2) (“(1) Subsection 112 (1) of the Act is repealed and the following substituted: (1) Subject to subsection (4) and the regulations and despite anything in the declaration, a by-law, an agreement or an instrument, a corporation may, by resolution of the board within 12 months following the election of a new board at a meeting held in accordance with subsection 43 (1), terminate an agreement described in subsection (2) that the corporation has entered into with a person before the election of the new board, other than an agreement mentioned in section 21.1. (2) Section 112 of the Act is amended by adding the following subsection: (4.1) If a corporation terminates an agreement under this section, the corporation and its directors, officers and owners are not liable for, (a) any obligations in respect of the termination, including obligations purporting to be incurred as cancellation charges, administration charges, accelerated payments or any other charges, penalties or fees; (b) any monetary obligations under the agreement respecting any period after the termination takes effect, unless the regulations provide otherwise; or (c) any other prescribed consequences.” [not in force]).

tainty. Either development could have significant long-term economic consequences for the strata corporation.

These disadvantages could lead to the conclusion to retain the status quo. It could be argued that the current legislation strikes the right balance. It gives strata corporations some tools to combat the worst abuses but doesn't go so far as to create contractual uncertainty.

The drawback of this approach is that it leaves any concerns about the current law unaddressed. There are indications of frustration within the strata sector about leases of common property. The current law appears to lack an answer to this frustration.

Between these two ends of the spectrum there is any number of intermediate options that could be considered. It may be possible to craft a narrowly tailored provision that would weed out concerning leases while not doing much to unsettle contractual certainty. But the downside of such an approach is that it might only provide temporary relief. Frustrations could re-emerge if some new practice, related to but distinct from the current approach, were to grow up as a way to get around a narrowly tailored provision.

The committee's recommendation for reform

In the committee's view, there are serious concerns arising from this issue, which should be met with a legislative response. But the committee was unwilling to go so far as to propose an enhanced power to terminate leases of common property. The advantages of such a power are outweighed by its disadvantages.

In the committee's view, there are problems arising from certain leases of common property and common assets. These problems can be addressed by a tailored provision. Such a provision should be directed at the term of the lease. In the committee's view, the real problems arise from leases that stretch out far into the future, binding the strata corporation long after the owner-developer has left the scene. A provision that limits the term of such leases would clear up much of the current frustration. Consultation respondents supported the committee's proposal on this issue, by a solid majority.

The committee favours five years as the length of a statutory limitation on lease terms. Some arbitrariness would attach to any number selected here. Five years is a common lease term, and would appear to strike the best balance between being a reasonable length and not excessively binding the strata corporation. But to address

cases in which some flexibility would be desired, the committee also favours building a mechanism into the legislation, allowing for a longer term.

The committee also favours limiting the reach of this proposed provision to common property that can be classified as fixtures and to common assets.

The specifics of these last two points are addressed in the following issues for reform.

The committee recommends:

3. The Strata Property Act should provide that any lease, entered into by the owner-developer, of a fixture that is common property or of a common asset must not have a term that exceeds five years.

How should “fixtures” be defined for a provision applying to a lease of a fixture that is common property or of a common asset entered into by the owner-developer?

Brief description of the issue

Fixtures is a term of art, with a complex meaning in the common law. It’s also a defined term in British Columbia strata-property law, with a meaning assigned by the regulation¹⁸⁵ for use in connection with two provisions dealing with insurance issues.¹⁸⁶ Should this existing definition be extended to the committee proposed provision dealing with leases of common property and common assets?

Discussion of options for reform

There are several options to consider for this issue. *Fixtures* could be defined by the common law, by the existing definition in the *Strata Property Regulation*, or by a new statutory definition.

Fixtures is a term with an established meaning at common law. If a specific legislative definition were not assigned to the term in the proposed provision, then courts would likely draw on the common law to establish its meaning. But the common-law

185. See *supra* note 6, s 9.1 (1).

186. See *Strata Property Act*, *supra* note 5, ss 149 (1) (d), 152 (b).

test for determining whether property is a fixture is complex.¹⁸⁷ Commentators have criticized its lack of certainty.¹⁸⁸

The regulation's definition of *fixtures* is clear by comparison to the common law, relying on a list of specific items of property: " 'fixtures' means items attached to a building, including floor and wall coverings and electrical and plumbing fixtures, but does not include, if they can be removed without damage to the building, refrigerators, stoves, dishwashers, microwaves, washers, dryers or other items."¹⁸⁹ Extending this definition to the proposed provision would ensure certainty about the meaning of the term and would promote consistency across the legislation.

But the regulation's definition could have drawbacks. It was developed for provisions that regulate insurance coverage. It could be seen as a poor fit for a provision intended to regulate the terms of leases.

This disadvantage would be addressed by a legislative definition crafted specifically for the proposed provision. But a different legislative definition would create an inconsistency within the act.

The committee's recommendation for reform

In the committee's view, the existing definition of *fixtures* is adequate for the purposes of the proposed provision. Using it would promote consistency across the act, which is a worthwhile goal. A strong majority of consultation respondents agreed with the committee on this issue.

187. See Bruce Ziff, *Principles of Property Law*, 7th ed (Toronto: Thomson Reuters, 2018) at 136 ("The determination of whether a chattel has been transformed into a fixture is a matter of intention, objectively determined. That intention is ascertained by examining the degree and object (sometimes called purpose) of the annexation. When a chattel is attached to the land, however slightly, a rebuttable presumption is raised that the item has become a fixture. The extent of the attachment tends to affect the strength of that presumption. The presumption is reversed if the chattel is resting on its own weight; here, it will be presumed to remain a chattel. The sole ground for the rebuttal of these two presumptions is the object/purpose of annexation. The test is whether the purpose of attachment was (a) to enhance the land (which leads to a conclusion that a fixture exists) having regard to the land's intended use; or (b) for the better use of the chattel as a chattel." [footnotes omitted]).

188. See *ibid* at 137 ("Attempts to reconcile the myriad cases relating to the application of the law of fixtures seem pointless." [footnote omitted]).

189. *Supra* note 6, s 9.1 (1).

The committee recommends:

4. For the purpose of the previous recommendation, the definition of “fixtures” found in section 9.1 of the Strata Property Regulation (“‘fixtures’ means items attached to a building, including floor and wall coverings and electrical and plumbing fixtures, but does not include, if they can be removed without damage to the building, refrigerators, stoves, dishwashers, microwaves, washers, dryers or other items”) should apply.

Should the Strata Property Act provide that the superintendent of real estate may approve a lease of a fixture that is common property or of a common asset entered into by the owner-developer with a term that exceeds five years?

Brief description of the issue

While a general rule restricting the terms of leases of common property or common assets may be desirable, there may also be some cases in which the restriction could prove to be harmful. Should the legislation contain a mechanism to account for such cases?

Discussion of options for reform

Including a mechanism to allow leases that have terms exceeding five years would give the legislation greater flexibility. It would also give it scope to ensure that the general reach of the provision doesn’t end up causing harm in special cases.

But including such a provision would also make the legislation more complex. And it would run up against the challenge of designing an appropriate mechanism.

The committee’s recommendation for reform

The committee was concerned that there may be cases that could be affected by its general provision. It noted that district energy leases could be one example, depending on the terms of the lease.

While there are challenges in designing an appropriate mechanism, in the committee’s view the best approach would be to rely on the oversight of the superintendent of real estate. The superintendent has a consumer-protection mandate and has access to a range of tools. There are a number of ways in which the superintendent may grant approval of a lease with a term exceeding five years—for example, by issuing a policy statement or by a specific exemption.

This proposal was the only one in the *Consultation Paper on Common Property, Land Titles, and Fundamental Changes for Stratas* that met with disapproval from a majority of consultation respondents. Even though the results from the consultation were very close (only a bare majority disagreed with the proposal), the committee decided to give this proposal a second look as it was preparing this report.

Much of the concern expressed in the consultation regarding this proposal questioned the need for this mechanism. But, even on a second look, the committee was of the view that this mechanism is an integral part of the package of reforms that it is recommending for this area of the law. There are cases—notably those involving district energy leases—in which a lease of a fixture for a term of more than five years is effectively mandated by a government. Without a mechanism to address those cases, the law could put some strata corporations in an untenable position, caught between a provision in a statute holding that leases may not exceed five years and a government demanding that a lease do just that.

The committee recommends:

5. The Strata Property Act should provide that the Superintendent of Real Estate for British Columbia has the authority to approve a lease of a fixture that is common property or of a common asset entered into by the owner-developer with a term that exceeds five years.

Issues for Reform—Parking Stalls and Storage Lockers

The *Strata Property Act* doesn't require a strata property to have parking stalls. This issue is left to the local government for the municipality in which the strata property is located. But in the vast majority of cases, the local government will require that the strata property have parking stalls.

While “[m]unicipal bylaws specify the number of parking stalls required for a development,” a leading practice guide notes, they “do not determine how the owner developer allocates those stalls.”¹⁹⁰ This is where the *Strata Property Act* focuses its attention.

The act provides a range of options for organizing a strata property's parking stalls. Parking stalls may be:

190. *British Columbia Strata Property Practice Manual*, *supra* note 2 at § 3.29.

- designated as limited common property for the exclusive use of a strata lot at the time the strata plan is deposited in the land title office;¹⁹¹
- designated as limited common property for the exclusive use of a strata lot, after deposit of the strata plan, at any time before the strata corporation's first annual general meeting;¹⁹²
- common property;¹⁹³
- common property subject to a lease or a licence,¹⁹⁴ or even, in some cases, a short-term exclusive use arrangement;¹⁹⁵
- part of a strata lot;
- a separate strata lot (if the strata plan is made up of nonresidential strata lots).

Parking "is often a contentious issue in a strata development."¹⁹⁶ In response to concerns, the *Strata Property Act* was amended in 2009.¹⁹⁷ The amended provision came into force on 1 January 2014.¹⁹⁸ Its main purpose was enhanced disclosure.

191. See *ibid* at § 3.31 ("This approach is common in smaller residential developments, where more sophisticated mechanisms are not viable.").

192. See *Strata Property Act*, *supra* note 5, s 258.

193. See *British Columbia Strata Property Practice Manual*, *supra* note 2 at § 3.30 ("If parking is common property . . . it is under the control of the strata corporation and can be allocated by the strata council, subject to the bylaws. . . . This mechanism does not permit the owner developer to sell additional stalls and tends to be common only in small developments or in markets where parking has limited value.").

194. See *ibid* at § 3.33 ("It is relatively common in larger developments in localities where parking stalls have significant market value for owner developers to maximize flexibility and sales revenue through arrangements styled as leases or licences. Typically, the parking facility or parking stalls are leased to an entity controlled by the owner developer for a 99-year term. Concurrently with completion of a strata lot purchase, the owner developer partially assigns the lease to the purchaser as to one or more stalls, or grants licences of those stalls to the purchaser. Future purchasers of a strata lot must then receive a further assignment of the parking stall lease or licence, or a new licence, in addition to a transfer of the strata lot.").

195. See Mangan, *supra* note 4 at 284.

196. *British Columbia Strata Property Practice Manual*, *supra* note 2 at § 4.20. See also *C.2K Holdings Ltd v The Owners, Strata Plan K 577*, 2018 BCCRT 236 at paras 51–57; *The Owners, Strata Plan VIS 3437 v Townsite Marina Ltd*, 2018 BCCRT 166; *Zeng v The Owners, Strata Plan VR 55*, 2018 BCCRT 190 at paras 57–66; *Zanatta*, *supra* note 146 at paras 33–52 (examples of recent disputes before the Civil Resolution Tribunal involving allocation of parking stalls).

197. See *Strata Property Amendment Act, 2009*, *supra* note 30, s 12 (a).

198. See BC Reg 238/2011, para (d).

This purpose was effected by requiring a strata corporation, as part of an Information Certificate (Form B) to disclose “which parking stalls and storage lockers, if any, have been allocated to the strata lot.”¹⁹⁹

But there remain issues beyond disclosure. As a leading practice guide puts it, “[m]ost difficult parking stall issues in strata corporations arise from the mechanisms used by owner developers to allocate stalls so that they can sell additional stalls to purchasers willing to pay a premium for them.”²⁰⁰

Broadly similar considerations apply to storage lockers, which are often grouped together with parking stalls in legislation and regulations.²⁰¹ But, it must also be said, that most of the conflicts in this area have concerned parking.

This relatively narrow concern engages some of the overriding themes of this report, such as strata-plan amendment and common property. While the committee has decided that a comprehensive rewriting of the act’s approach to parking stalls and storage lockers shouldn’t form part of this report, it has decided to tackle a series of issues relating to the provision enabling these leases, section 258.

Should the Strata Property Act continue to allow leases and licences of parking stalls and storage lockers?

Brief description of the issue

Among the many options for allocating parking stalls and storage lockers in a strata property, leases and licences appear to have been the source of the most concerns. Should the act be amended to prevent this method of allocating parking stalls and storage lockers?

Discussion of options for reform

The main argument in favour of the proposed reform is that the use of leases and licences have created confusion in many strata properties and sown the seeds of conflict in others.²⁰² Because leases and licences are private contracts, there is often less

199. *Strata Property Act*, *supra* note 5, s 59 (l.1).

200. *British Columbia Strata Property Practice Manual*, *supra* note 2 at § 3.29.

201. See *Strata Property Act*, *supra* note 5, s 59 (3) (l.1); *Strata Property Regulation*, *supra* note 6, Form B (Information Certificate).

202. See e.g. *One West Holdings Ltd v The Owners, Strata Plan LMS2995*, 2019 BCSC 707 at paras 7–8, Skolrood J (“The central issue in this action is which of [the plaintiff] and the [defendant] has the rights to possess, control and profit from the Commercial Parking Stalls. This issue turns on the

of a record of these transactions than is the case for the other options for allocating parking spaces and storage lockers. As the years go by and the strata lot associated with the space or stall is transferred, strata corporations can lose track of these arrangements. A lease may be registered in the land title office, which would provide some level of certainty. But it isn't clear that registration is frequently occurring in practice.

A further concern is that this approach to allocating parking spaces (in particular) and storage lockers often seems to benefit the owner-developer's short-term interests, while contributing little to the long-term interests of the strata corporation. In some cities, there is a lucrative market in parking spaces. Using leases and licences as the means of allocating parking spaces can allow owner-developers to participate in this market. But participation in this market often only breeds long-term frustration for strata-lot owners.

The downside to preventing this practice is that it could limit flexibility in allocating parking spaces and storage lockers and unsettle current practices.

The committee's recommendation for reform

The committee is concerned about the potential of leases and licences to cause confusion. It favours eliminating this option. But this proposal should be coupled with other reforms, which will be set out in the proceeding issues, as a means to re-balance the system of allocating parking spaces and storage lockers.

While a majority of consultation respondents agreed with the committee, a significant minority were of the view that leases and licences of parking stalls and storage lockers should be allowed to continue. These respondents touted the flexibility of such legal devices in allocating parking stalls and storage lockers. The committee gave extended consideration to the points raised in the consultation responses. It continues to be of the view that any benefits flowing from leases and licences are outweighed by their disadvantages, particularly their ability to breed confusion and conflict. In the committee's view, they should no longer have a place in the legal framework. But the committee was open to pursuing other suggestions in the responses for that legal framework. These suggestions appear in the recommendation for the issue that follows.

validity of a lease structure put in place by [the owner-developer] prior to the deposit of the strata plan pursuant to which [the owner-developer] purported to retain control over all of the parking stalls and storage lockers in the Development, including the Commercial Parking Stalls. [The plaintiff] submits that this structure is common to many similar strata developments.”).

The committee recommends:

6. *The Strata Property Act should provide that any lease or licence of a parking stall or storage locker entered into before or after the deposit of a strata plan by the owner-developer is void.*

Should the period in which an owner-developer may amend the strata plan to designate parking stalls and storage lockers as limited common property for the exclusive use of owners of strata lots in the strata plan be extended?

Brief description of the issue

Section 258 currently gives the owner-developer a power to amend the strata plan in respect of parking stalls. Under this provision the owner-developer may amend the plan to designate parking stalls as limited common property. This power may be exercised “at any time before the first annual general meeting of the strata corporation.”²⁰³ Should this period be extended?

Discussion of options for reform

The main rationale for extending this period is practical: it can be difficult for owner-developers to settle parking allocations over the period before the strata corporation’s first annual general meeting. Extending this period to a later annual general meeting would provide a more realistic period for working out parking arrangements. A secondary rationale is to support the reform set out in the previous recommendation. Losing the ability to allocate parking stalls by lease or licence may be offset by a longer period to amend the strata plan under section 258.

But there may be downsides to this approach. While there may be some arbitrariness in selecting the period before the first annual general meeting as the applicable period under section 258, that period does tie into other duties and responsibilities of the owner-developer during the early life of a strata property.²⁰⁴

203. *Supra* note 5, s 258 (1).

204. See *ibid*, s 5 (1) (“The owner developer must exercise the powers and perform the duties of a council from the time the strata corporation is established until a council is elected at the strata corporation’s first annual general meeting.”).

The committee's recommendation for reform

In the consultation paper, the committee generally favoured extending the period under section 258 to the third annual general meeting. In its view, this change would help to address some practical problems and will support the broader effort to reform the allocation of parking stalls.

But the committee was concerned that extending this period could lead to an owner-developer that no longer has any interest in the strata property still having the power to amend the strata plan. The committee decided that this possibility should be foreclosed by limiting this power to owner-developers who continue to hold title to at least one strata lot.

Finally, the committee noted that this proposal extends beyond the transition point from control by the owner-developer to control by an elected strata council, which is the first annual general meeting.²⁰⁵ One implication of this is that the strata corporation should be kept informed of changes that may be carried out by the owner-developer under this proposed provision.

While a majority of consultation respondents agreed with the committee's tentative recommendation, a significant minority disagreed. Some of those respondents urged the committee to consider a longer period under section 258 and to expand the section's reach to embrace parking stalls. After consideration, the committee agreed with these points. In the committee's view, extending the period in which section 258 applies will give further support to its broader reforms in this area, particularly ending the use of leases and licences. The committee decided that it also makes sense to expand the section's scope to take in storage lockers. While storage lockers haven't been the source of nearly as many complaints as parking stalls, the potential does exist for them to become troublesome. Bringing them under section 258 may help to allay any potential concerns. It would also be consistent with other legislative and regulatory provisions (notably those regarding Information Certificates) that subject parking stalls and storage lockers to equivalent requirements.²⁰⁶

The committee recommends:

7. Section 258 of the Strata Property Act should be amended by: (a) striking out the words "first annual general meeting" wherever they appear and replacing them with "fifth annual general meeting"; (b) adding a new subsection that reads "This section

205. See *ibid*, s 20.

206. *Strata Property Act*, *ibid*, s 59 (3) (1.1); *Strata Property Regulation*, *supra* note 6, Form B (Information Certificate).

only applies when the owner-developer has not conveyed all the strata lots”; (d) amending subsection (6) to read “A designation of parking stalls or storage lockers under subsections (1) or (3): (a) does not require approval by a resolution at an annual general meeting or special general meeting; (b) the owner-developer must give the strata corporation written notice of an amendment of the strata plan”; and (e) making such amendments as are necessary to expand the scope of the section to embrace storage lockers.

Should the Strata Property Act provide that any parking stalls or storage lockers that have not been designated as limited common property by the owner-developer under section 258 remain common property?

Brief description of the issue

Section 258 of the *Strata Property Act* currently doesn’t spell out the consequences if an owner-developer uses the section to amend the strata plan and designate some parking stalls or storage lockers as limited common property. Should the section address the consequences for the other, undesignated parking stalls or storage lockers? If so, what should the act provide in these cases?

Discussion of options for reform

Amending section 258 of the act to spell out the consequences of not designating parking stalls or storage lockers as limited common property would dispel any uncertainties about the status of those stalls or lockers. This would be beneficial in itself, and would support the broader thrust of the proposed reforms in this part of the report.

The downside of this proposed amendment is that it could leave strata corporations with an allocation of parking stalls or storage lockers that might not reflect their intentions. Through inadvertence or inaction, a strata corporation may end up with a swath of its parking stalls or storage lockers declared to be common property.

The committee’s recommendation for reform

The committee favours amending section 258 to clearly establish the status of parking stalls or storage lockers that haven’t been designated as limited common property when the process set out in that section is engaged. In the committee’s view, the logical choice is for these parking stalls or storage lockers to retain the status of common property. A solid majority of consultation respondents agreed with the committee’s proposal on this issue.

The committee recommends:

8. The Strata Property Act should provide that at the strata corporation's fifth annual general meeting any parking stalls or storage lockers that have not been designated as limited common property under section 258 remain common property.

Chapter 4. Land Titles

Background Information on Land-Title Issues

The *Strata Property Act* is a relatively new statute—dating, through its predecessor acts, only to the mid-1960s.²⁰⁷ Its overarching purpose is to enable a specific kind of real-estate development. In contrast, the *Land Title Act*²⁰⁸ is a longstanding statute of general application to real-property law. The original *Land Title Act* actually predates British Columbia's entry into the Canadian confederation.²⁰⁹ The goals of the *Land Title Act* have always been to provide a legal framework for establishing security of title to land and for facilitating transfers of interests in land.²¹⁰ Over the years, though, the *Land Title Act* has grown considerably in size and scope. It now contains over 400 sections, which touch on a wide range of topics of concern for real-estate law.²¹¹

An academic comment has described the ideal relationship between the *Strata Property Act* and the *Land Title Act* as one that is “symbiotic—a mutually beneficial partnership between different organisms.”²¹² This chapter's main concern is with probing that relationship, in an effort to ensure that it is meeting this standard.

207. See, above, at 8–10 (summarizing evolution of strata-property law through three generations of legislation).

208. *Supra* note 19.

209. The oldest legislation on land titles in what is now the province of British Columbia dates to a time when it was two British colonies, Vancouver Island and the mainland. See *Vancouver Island Land Registry Act*, RSBC 1860, no 3; *British Columbia Land Registry Act, 1861*, RSBC 1871, no 20 (appendix).

210. See Victor J Di Castri, *Registration of Title to Land*, vol 1 (Calgary: Carswell, 1987) (loose-leaf release 2010–2) at para 13 (“The objects of the [land-title] system are: the creation by the state of an indefeasible title in the registered owner; simplification in the transfer of land; certainty and facility in the proof of title by reference to a certificate issued by a government official and made conclusive by law; and finally, the saving to the community of the cost of a new examination of title in connection with each transfer or transaction affecting the land.” [footnote omitted]). See also *Gibbs v Messer*, [1891] AC 248 at 254 (UKPC); *Re Shotbolt* (1888), 1 BCR (Pt 2) 337 (SC).

211. See e.g. *supra* note 19, part 5 (attestation and proof of execution of instruments), part 7 (descriptions and plans), part 10.1 (electronic filing).

212. Jack H Watson & Peter J Grimes, “The Strata Titles of New South Wales, Australia” (1965) 30:4 Sask Bar Rev 265 at 269.

Scope of this Chapter

A starting place is to note that there are many points of contact between the *Strata Property Act* and the *Land Title Act*. The most obvious point of intersection between the two acts is part 14 of the *Strata Property Act*, which is dedicated to “land titles.”²¹³ The part contains 17 sections, dealing with a range of topics that are difficult to group into broader themes. An attempt, using subthemes, would look like this:

- subdividing land by depositing a strata plan in the land title office:
 - title requirements for deposit of strata plan;
 - surveyor’s endorsement of nonoccupancy for building strata plans;
 - when special approval is required—applicable to bare-land strata plans (approving officer) and to building strata plans that involve a conversion of a previously occupied building (approving authority);
- strata plans:
 - requirements and accompanying documents;
 - Schedule of Unit Entitlement;
 - Schedule of Voting Rights (when approved or not approved by superintendent of real estate);
 - requirement on registrar of land titles to deposit strata plan and accompanying documents that meet legislative requirements;
- establishing a general index, including a reference to common-property ownership on title, and establishing a common-property record;
- subdividing common property;
- conclusive effect of a Certificate of Strata Corporation;
- describing the transferee when a strata corporation acquires land;
- when a Certificate of Payment is required.

While the committee has reviewed part 14, it has focused its recommendations on the most pressing areas where the interplay of the *Strata Property Act* and the *Land Title Act* appears to be causing the most concerns in practice. In the committee’s view, these areas are the following:

213. See *supra* note 5, ss 239–256.

- emerging issues in subdivision control;
- depicting common property for strata plans;
- depicting the vertical limits of limited common property for strata plans;
- requiring a Certificate of Payment on a transmission of title.

Issues for Reform—Emerging Issues in Subdivision Control

Introduction

A leading commentator has observed that “the control of subdivision is the principal means by which land development is regulated.”²¹⁴ Subdivision control is the regulation of “what was once, but is no longer, a common law right incidental to ownership of land: the right to divide it into fragments and transfer those fragments to others.”²¹⁵

There are two major elements to the system of subdivision control: legislative provisions and oversight by a public official. This public official is called the approving officer. *Approving officer* is a defined term under the *Land Title Act*.²¹⁶ The definition incorporates a wide range of local officials. “For land within a municipality,” the *Land Title Act* provides that “the municipal council must appoint a person as an approving officer,”²¹⁷ choosing from the following list:

- the municipal engineer,
- the chief planning officer,
- some other employee of the municipality appointed by the municipal council, or
- a person who is under contract with the municipality.²¹⁸

214. William Buholzer, in association with the Planning Institute of British Columbia, *British Columbia Planning Law and Practice* (Toronto: LexisNexis Canada, 2001) (loose-leaf release no 50 December 2018) at § 13.1.

215. *Ibid* at § 13.42.

216. See *supra* note 19, s 1 (1) “approving officer” (“means, as applicable, (a) the municipal approving officer under section 77, (b) the regional district approving officer under section 77.1, (c) the islands trust approving officer under section 77.1, (d) the Provincial approving officer under section 77.2, (e) the Nisga’a approving officer under section 77.3, or (f) the treaty first nation approving officer appointed under section 77.21.”)

217. *Ibid*, s 77 (1).

218. *Ibid*, s 77 (2).

There are equivalent lists for regional districts and island trusts,²¹⁹ treaty first nations,²²⁰ and Nisga'a Lands.²²¹ If the land is a "rural area" not covered by a regional district or an island trust, then the approving officer is the provincial approving officer.²²²

The approving officer has been described as being "at the focus" of British Columbia's subdivision-control system,²²³ because this official retains the discretion to approve or deny an application for subdivision.²²⁴

While the approving officer makes the ultimate call on whether or not a subdivision goes ahead, the officer's discretion operates within what one judge has called a "thicket" of provincial, regional, and local laws.²²⁵ For the purposes of this report a comprehensive discussion of these laws isn't necessary;²²⁶ it's sufficient simply to note the interplay of two provincial statutes.

The foundational statute for subdivision control is the *Land Title Act*. Historically, it was the act that contained the only legislative framework for subdivision control. It still contains a framework, set out in four divisions of part 7 (descriptions and

219. See *ibid*, s 77.1.

220. See *ibid*, s 77.21.

221. See *ibid*, s 77.3

222. *Ibid*, s 77.2 ("(1) If an approving officer is not appointed under section 77.1 for a rural area, the approving officers for the area are (a) the deputy minister to the minister charged with the administration of the *Transportation Act*, and (b) approving officers appointed under subsection (2). (2) The Lieutenant Governor in Council may appoint a person as an approving officer for a rural area referred to in subsection (1).").

223. Buholzer, *supra* note 214 at § 13.42.

224. See *ibid*.

225. *ARA Holdings Ltd v British Columbia (Provincial Approving Officer)*, 2001 BCCA 397 at para 6, Newbury JA ("These provisions [of the *Bare Land Strata Regulations*] and the balance of the Regulations are part of a thicket of local and regional requirements faced by a property-owner seeking to subdivide land. And, whilst the decision to grant or withhold the approval is that of the approving officer alone, that official must in practice seek the advice and input of various municipal, regional and provincial officials and, in some instances, be satisfied that particular features of the proposed subdivision will comply with other bylaws or codes or even that it be approved by another approving officer. Thus it is not surprising that as a matter of course, an approving officer on receipt of a subdivision application routinely makes various 'checks' with, and seeks the comments of, the many branches of government now involved in land use regulation." [citations omitted]).

226. See Buholzer, *supra* note 214 at ch 13 for such a discussion.

plans),²²⁷ and applying to what a commentator has called “conventional subdivisions.”²²⁸

But, just as real-estate development has evolved over the course of the 20th and 21st centuries, so too has legislation enabling different kinds of subdivisions proliferated. “British Columbia has kept pace with other North American jurisdictions,” a commentator has observed, “in creating enabling legislation for the full range of real estate ‘products’ that the property development industry has devised. . . . [New legislation has allowed] subdivisions of land to create air space parcels and several types of strata plans are possible.”²²⁹

As the deposit of a strata plan in the land title office can be seen as a form of subdivision,²³⁰ so the *Strata Property Act* has emerged alongside the *Land Title Act* as an important piece of legislation for subdivision control.²³¹ The *Strata Property Act*’s requirements²³² for registering strata plans “are similar to the requirements for the registration of other subdivision plans”: strata plans “must be prepared by a British Columbia land surveyor”; they also must include “the boundaries of the land and the strata lots, the location of the buildings, if any, and the identification of the strata lots by numbers or letters.”²³³

Even though the requirements of the two acts are broadly similar, there are some wrinkles that give rise to legal issues. Understanding the issues that arise from the *Strata Property Act*’s approach to subdivision control entails appreciating first that

227. See *supra* note 19, ss 73–98 (containing part 7, division 2 (subdivision of land), division 3 (appointment, powers and duties of approving officers), division 4 (approval of subdivision plans), division 5 (deposit of subdivision plans)).

228. See Buholzer, *supra* note 214 at § 13.3. (describing “conventional subdivisions” as “simple subdivisions of parcels of land intended to be held independently of other land by an owner in fee simple”).

229. *Ibid.*

230. See *Strata Property Act*, *supra* note 5, s 239 (1) (“Land may be subdivided into 2 or more strata lots by the deposit of a strata plan in a land title office.”).

231. See Buholzer, *supra* note 214 at § 13.2 (“The principal statutory restrictions on the subdivision of land are set out in the *Land Title Act* and the *Strata Property Act* and associated Regulations. The *Real Estate Development Marketing Act* imposes certain restrictions on the marketing of real property that rely on the decisions of approving officers and approving authorities.” [footnotes omitted]).

232. See *supra* note 5, s 244.

233. Continuing Legal Education Society of British Columbia & Land Title and Survey Authority of British Columbia, eds, *Land Title Practice Manual*, 3rd ed, vol 3 (Vancouver: Continuing Legal Education Society of British Columbia, 2007) (loose-leaf 2018 update) at § 53.2.

the act distinguishes between two types of strata plans: “one subdivides buildings and the other subdivides land.”²³⁴

Building strata plans²³⁵ have been part of British Columbia’s strata-property legislation since the beginning.²³⁶ The act provides that “[i]f a person applying to deposit a strata plan wishes to include in the strata plan a previously occupied building,” then that person must first obtain approval for converting this previously occupied building into a strata property.²³⁷ This approval is granted or withheld by an approving authority,²³⁸ in compliance with the considerations set out in the act.²³⁹ Significantly, if the strata plan doesn’t involve conversion of a previously occupied building (and most of them don’t), then the plan only “must be endorsed by a British Columbia

234. Mangan, *supra* note 4 at 17. See also *British Columbia Strata Property Practice Manual*, *supra* note 2 at §§ 3.4–3.5. See, above, at 10–11 (general discussion of strata plans).

235. *Building strata plan* is a term used by some commentators. See Mangan, *supra* note 4 at 17. Other commentators use *conventional strata plan* to refer to this type of plan. See *British Columbia Strata Property Practice Manual*, *supra* note 2 at § 2.4. The act itself doesn’t use either of these terms; it just refers to *strata plans*.

236. See *Strata Titles Act*, *supra* note 25, s 4.

237. *Supra* note 5, s 242 (2). The expression *previously occupied* is defined in the regulations. See *Strata Property Regulation*, *supra* note 6, s 14.1 (“**previously occupied**’ means occupied at any time in its past for any purpose, including residential, commercial, institutional, recreational or industrial use, but does not include the occupation of a proposed strata lot by the owner developer solely as a display lot for the sale of strata lots in the proposed strata plan” [emphasis in original]).

238. See *supra* note 5, s 242 (1) (defining *approving authority* to mean “(a) the municipal council of the municipality if the land is located in a municipality, (b) the regional board of the regional district if the land is located in a regional district but not in a municipality and is neither Nisga’a Lands nor treaty lands of a treaty first nation, (c) the Nisga’a Village Government if the land is located within Nisga’a Village Lands, (d) the Nisga’a Lisims Government if the land is Nisga’a Lands other than Nisga’a Village Lands, or (e) the governing body of the treaty first nation if the land is located within the treaty lands of that treaty first nation.”).

239. See *ibid*, s 242 (5) and (6) (“(5) The approving authority must not approve the strata plan unless the building substantially complies with the following: (a) the applicable bylaws of the municipality or regional district; (b) applicable Nisga’a Government laws; (b.1) the applicable laws of the treaty first nation; (c) the building regulations within the meaning of the *Building Act*, except, in relation to a treaty first nation that has entered into an agreement described in section 6 of that Act, to the extent that the agreement enables the treaty first nation to establish standards that are different from those established by the building regulations. (6) In making its decision, the approving authority must consider (a) the priority of rental accommodation over privately owned housing in the area, (b) any proposals for the relocation of persons occupying a residential building, (c) the life expectancy of the building, (d) projected major increases in maintenance costs due to the condition of the building, and (e) any other matters that, in its opinion, are relevant.”).

land surveyor certifying that the building has not been previously occupied.”²⁴⁰ It doesn’t require approval from an approving officer or approving authority.

Strata plans that subdivide land are called *bare-land strata plans*. These types of plans weren’t part of the original legislation; they were added in 1974.²⁴¹ At that time, bare-land strata plans didn’t require approval by an approving officer.²⁴² Given how similar a bare-land strata plan is to a conventional subdivision,²⁴³ this state of affairs created some anomalous cases and abuses.²⁴⁴ The legislature moved to check those abuses by amending the act in 1977.²⁴⁵ Now, bare-land strata plans are subjected to an extensive approval process, set out in the *Strata Property Act*²⁴⁶ and the *Bare Land Strata Regulations*.²⁴⁷

240. *Ibid*, s 241 (1).

241. See *Strata Titles Act*, *supra* note 26, s 3 (4) (b). See also Buholzer, *supra* note 214 at § 13.10 (“The popularity of individual ownership interests in apartments in multi-unit residential buildings and portions of industrial and commercial buildings resulted in the Province amending the strata titles legislation in 1974 to permit strata titling of bare land. Bare land strata plans are superficially very similar to conventional subdivision plans, except that areas that might be shown as dedicated internal highways on a subdivision plan are shown as ‘access routes,’ a form of common property. This private ownership of the streets in a bare land strata subdivision creates the opportunity for a ‘gated community’ and has proven to be a popular form of ownership in B.C., though not as popular as in some U.S. jurisdictions.” [footnote omitted]).

242. See Buholzer, *ibid* at § 13.11 (“At the outset, bare land strata plans did not require the approval of the subdivision approving officer and local government bylaws imposing minimum parcel areas could not be applied, despite the obvious similarity of bare land strata subdivisions to conventional subdivisions.” [footnote omitted]).

243. See Buholzer, *ibid*; *British Columbia Strata Property Practice Manual*, *supra* note 2 at § 3.5 (“A bare land strata lot in many ways has more in common with a lot subdivided under the *Land Title Act* than with a conventional strata lot.”).

244. See *Re Jarvis and Resort Municipality of Whistler* (1977), 82 DLR (3d) 409 at 411, [1977] BCJ No 1263 (QL) (SC), Ruttan J (“I agree this is not a good situation whereby lots can be created and dwellings multiplied beyond the control of the zoning by-law in any particular municipality, and I am advised that under the new *Strata Titles Act*, this situation will be corrected whereby more complete power and zoning control will be returned to each local municipal council. At the present time, however, if these are valid strata lots then they may be built on uncontrolled by the zoning by-law, though still governed by the building by-law in the municipality.”).

245. See *Strata Titles Amendment Act, 1977*, SBC 1977, c 43, s 1. This act and the 1974 *Strata Titles Act*, *supra* note 26, referred to *support-structure plans*. The name *bare-land strata plan* made its first appearance in legislation in the *Strata Titles Amendment Act, 1977 (No 2)*, *supra* note 26. See also Buholzer, *supra* note 214 at § 13.11.

246. See *supra* note 5, s 243.

247. BC Reg 75/78.

And it's this contrast between how building and bare-land strata plans are treated that gives rise to the issues for reform in this part of the report. Because building strata plans (so long as they don't involve the conversion of a previously occupied building) don't require approval by an approving officer and bare-land strata plans are subject to a rigorous approval process, there is an incentive for developers to try to characterize a strata plan as a building strata plan.²⁴⁸

This incentive can lead developers to take liberties. In one notorious case,²⁴⁹ a plan was submitted that subdivided a postal box into strata lots.²⁵⁰ Each of these strata lots had large sections designated as limited common property for the benefit of the strata lot.²⁵¹ The thinly disguised intent was for purchasers to use the limited common property for parking recreational vehicles. The registrar of titles refused to register the plan,²⁵² a decision that was upheld by the supreme court.²⁵³

This case can be seen as an "extreme example" of trying to make what appears to be a bare-land strata plan fit into the building-strata-plan mould for reasons primarily related to subdivision control.²⁵⁴ But similar, though less extreme, examples continue to crop up. One recent case involved a strata plan featuring "storage" areas as

248. See Buholzer, *supra* note 214 at § 13.9.

249. See *Swan Lake Recreation Resort Ltd v British Columbia (Kamloops Land Title Office, Registrar)* (1999), 174 DLR (4th) 549, 26 RPR (3d) 116 (BCSC) [*Swan Lake* cited to DLR].

250. See *ibid* at para 4, Cowan J ("The strata plan indicates that the several strata lots are 0.07 square metres each in area and stacked in rows to a height of seven levels. Each strata lot has a total space of 0.098 cubic metres.").

251. See *ibid* at para 3 ("The scheme of the development was to create 200 strata lots and assign to each of the strata lots as limited common property under the *Condominium Act*, R.S.B.C. 1996, c. 64, one of 200 recreational vehicle sites for the exclusive use of the owner of the strata lot to which it was assigned.").

252. See *ibid* at para 5 ("In his 'notice declining to register' issued pursuant to section 308 of the *Land Title Act* the registrar characterized what was purported to be a 'building' for the purposes of the *Condominium Act* as a 'mailbox.'").

253. See *ibid* at paras 35–36 ("Whether the strata lot is contained within a building or is simply a measured area of bare land, the primary intended use area is to be designated the 'strata lot,' and areas with residential uses ancillary to the primary use 'strata lot' must be either included in the strata lot or in the common property, and cannot be separate strata lots. In the presently proposed development, the scheme contemplated by the Act is inverted. It would be absurd to suggest that owners' use of the individually designated R.V. sites will be ancillary to their primary use of the development, the mailbox. The primary use areas of the development are the R.V. sites. There are no buildings enclosing the R.V. sites. Therefore, viewed from a functional perspective, the proposed development is clearly a 'bare land strata' rather than a 'building strata.' Consequently, the mailbox is not a 'building' within the meaning of the Act.").

254. Buholzer, *supra* note 214 at § 13.9, n 1.

strata lots, which were each entitled to a large “private yard area” as limited common property.²⁵⁵ This development was thwarted by the superintendent of real estate before it could get off the ground.²⁵⁶

The two issues for reform that follow represent two distinct approaches to responding to emerging issues in subdivision control. The first takes a general approach to the issues; the second takes a targeted approach.

Should all strata plans require the approval of an approving officer?

Brief description of the issue

Even though the deposit of a strata plan is considered to be a subdivision of land, the *Strata Property Act* currently allows many strata plans to be deposited without the approval of an approving officer. While bare-land strata plans require approving-officer approval, most building strata plans do not. (The small number of building strata plans that involve conversion of a previously occupied building *do* require approval—by an approving authority.)

This differential treatment of strata plans creates an incentive for developers to characterize what are functionally bare-land strata plans as building strata plans to avoid the requirement for approving-officer approval. The development of such building strata plans (in name only) skirts subdivision controls that form the cornerstone of land-use regulation in British Columbia. Should the *Strata Property Act*

255. *528872 B.C. Ltd—cease marketing order* (22 January 2007), at para 3, online: Superintendent of Real Estate for British Columbia <www2.gov.bc.ca/assets/gov/housing-and-tenancy/buying-and-selling/consumer-protection/redma-enforcement/redma20070122.pdf> [perma.cc/YP5]-UX66] (“The Development as described in the disclosure statement is located on 575 acres of land approximately 20 kilometres west of Qualicum Beach, in the Regional District of Nanaimo, British Columbia. The Development contains 286 building strata lots in Strata Plan VIS 4673, which was registered in 1998 at the Land Title Office. The strata lots are unusual in that each strata building is only about 26 square metres in size and suitable for storage purposes only. However, each strata lot also includes a private yard area of up to several hectares.”).

256. See *ibid* at paras 26–27 (“Based on the information provided by the complainants who allege inadequate or incomplete strata plan buildings, inadequate or incomplete utilities, some unpaved roads and construction within the area that will be prohibited by the proposed river covenant, and the information gathered by the Superintendent’s staff, I am of the opinion that the CDS [consolidated disclosure statement] is seriously deficient. . . . There are fundamental failures to disclose material facts and new purchasers would be prejudiced in their decision making ability. Therefore new purchasers may not understand and may not be getting what they are paying for.”).

be amended to require that approval of all strata plans by an approving officer, as a means to reduce the incentive to characterize strata plans as building strata plans?

Discussion of options for reform

Concerns about the use of building strata plans to circumvent aspects of subdivision control can be traced back to before the advent of the *Strata Property Act*. In the 1990s, the Union of British Columbia Municipalities endorsed a series of resolutions that addressed aspects of this issue.²⁵⁷ One of these resolutions called for legislative amendments that would, in essence, require approving-officer approval of building strata plans.²⁵⁸

The advantage of such an amendment is that it would directly address a problem that has dogged strata properties since at least the 1990s. There is a trail of developments that have used the building-strata form as a means to create what are functionally bare-land strata subdivisions without complying with the requirements for depositing a bare-land strata plan. Treating all strata plans on the same footing when it comes to approving-officer approval would dramatically undercut the incentive to attempt such a manoeuvre.

Other advantages to this approach include its simplicity and directness relative to other means that could be tried to address the issue. A more focused and limited

257. In September 2012, UBCM's associate executive director sent BCLI the results of a search of UBCM's resolutions database, which contained resolutions from 1988 to 2012. Using *strata* as a keyword, the database search yielded 28 records. UBCM resolutions made since 2003 (that is, currently covering the years 2003 to 2017, inclusive) are publicly available (last visited 7 August 2018), online: *Union of British Columbia Municipalities* <www.ubcm.ca/EN/main/resolutions/resolutions/resolutions-responses.html> [perma.cc/T2QJ-NN6X]. A search of resolutions considered in the years 2013 to 2017 yielded a further six resolutions dealing with or touching on strata properties. Not all of these resolutions concern subdivision control. Resolutions touch on a number of areas of interest to local governments (such as property taxation and dedication of park land) and public-policy concerns generally (such as charging stations for electronic vehicles). Four of the total 34 resolutions are directly aimed at the subdivision-control issue.

258. See Union of British Columbia Municipalities, Resolution B14 "Regulation of Strata Subdivisions" (1998) [unpublished, archived at British Columbia Law Institute] ("Whereas the *Condominium Act* permits the land title office to register strata title plans for new construction which is not phased without the approval of the local government within which the property is located; and whereas the Land Registry Office does not have any legal mandate or process for checking to see that the buildings being strata-titled are in full compliance with building codes or zoning bylaws; and whereas it would be desirable to allow local governments the power to ensure that new buildings being strata-titled are in full compliance with Building Codes and zoning bylaws: therefore be it resolved that UBCM recommend changes to the *Condominium Act* and *Municipal Act* that municipalities be given approval powers for the strata-titling of new buildings.").

provision—aimed just at the worst abuses, for example—would pose a more complex drafting problem. It would also run the risk of failing to address the underlying motivation of developers to characterize a strata plan as a building strata plan, which is the relatively lighter regulatory burden that such plans face.

The provincial response to the UBCM resolution did a good job of spelling out the disadvantages of this option for reform. This response noted that the days of the *Condominium Act* were numbered, as the new *Strata Property Act* had just passed the legislature, but without a provision that responded to the UBCM's concern. As the ministry of finance argued in its portion of the response, implementing the UBCM resolution would potentially have the following drawbacks:

- **costs and delay:** “A municipal approval requirement for all new strata developments would add considerable cost, as well as delay, to the development process.”²⁵⁹
- **availability of other legal tools:** “Currently, municipalities have considerable control over new strata developments because of their jurisdiction over zoning bylaws and the issuance of building permits.”²⁶⁰
- **response is out of proportion to the scale of the problem:** “Indeed, it is likely, in large part due to the successful enforcement of [municipal] bylaws, that the overwhelming majority of new strata developments are built in compliance with the applicable municipal bylaws. . . . Given the incidence of non-conforming developments is relatively low, and that municipalities have the means with which to deal with the occasional non-conforming developments, [the ministry is of the view that] the imposition of a requirement for municipal approval for all strata developments would not appear to be warranted at this time.”²⁶¹

Finally, it's worth noting that rejecting this approach doesn't necessarily lead to the conclusion that the status quo is acceptable. It's possible to tackle this issue with a targeted approach, rather than the general approach used in this option for reform.

259. *Ibid.*, provincial response, ministry of finance and corporate relations.

260. *Ibid.* An argument could also be made, in view of the decisions discussed earlier in the memorandum, that the land title office and the superintendent of real estate also have some tools to deal with extreme cases. See *Swan Lake, supra* note 249; *528872 B.C. Ltd—cease marketing order, supra* note 255.

261. *Ibid.*

The committee's recommendation for reform

The committee saw some merit to this proposed reform. It would clearly address the subdivision problem. But it would come with significant drawbacks, mostly in the form of added costs and delays. The committee also had a sense that the underlying problem varied across the province. Large urban governments likely already have the tools to address this problem. But local governments in less densely populated areas might welcome provincial legislation. While their concerns shouldn't be cast aside, the committee wasn't convinced that a general approach was the best way for provincial legislation to deal with these concerns.

While a majority of consultation respondents agreed with the committee, a sizeable minority disagreed, favouring legislation that would require approving-officer approval for all strata plans.

The committee recommends:

9. The Strata Property Act should not provide that all strata plans require the approval of an approving officer.

Should 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, be held to the same approval requirements that apply to a bare-land strata plan?

Brief description of the issue

This issue is based on one proposal that would take a targeted approach to the problem of building strata plans that appear to circumvent the subdivision-control system. One commentator has suggested that a key component of this problem is found in the act's provisions on strata-lot boundaries.²⁶² Section 68 of the act sets out a general rule making, in simplified terms, the midpoint of a wall, floor, or ceiling the boundary between strata lots (or strata lots and common property or another parcel of land).²⁶³

262. See Buholzer, *supra* note 214 at § 13.9.

263. See *supra* note 5, s 68 (1) ("if a strata lot is separated from another strata lot, the common property or another parcel of land by a wall, floor or ceiling, the boundary of the strata lot is midway between the surface of the structural portion of the wall, floor or ceiling that faces the strata lot and the surface of the structural portion of the wall, floor or ceiling that faces the other strata lot, the common property or the other parcel of land").

But this general rule is a default rule. The act contemplates two ways in which it may be overridden. First, the strata plan itself may depict other boundaries (“[u]nless otherwise shown on the strata plan”). Second, the act recognizes that some developments might not have strata lots separated from other strata lots, common property, or other parcels of land by a wall, floor, or ceiling. In these cases, the boundaries are as depicted on the strata plan.²⁶⁴

The commentator has said that by allowing for “the boundaries of a building strata lot to be shown as other than the midpoints of the walls, floors and ceilings,” the act has opened up “the opportunity for land developers to create what are in substance bare land strata subdivisions, without obtaining the approval of the approving officer.”²⁶⁵ Should the legislation be amended to close off this opportunity by requiring a strata plan that contains these features to meet the approval requirements imposed on a bare-land strata plan?

Discussion of options for reform

The advantages of this proposal are best seen in relation to the option discussed for the previous issue, which involved requiring all strata plans obtain approving-officer approval as a condition of registration. This proposal has a much more limited scope, so it wouldn’t bring about a sweeping (and expensive) change to strata-property development. But within this limited scope, it relies on essentially the same mechanism as the option for the previous issue: it removes the incentive to characterize a strata plan with specific qualities as a building strata plan solely to sidestep the need for approving-officer approval. So the proposal holds out a way to deal with the core of the problem while imposing no additional burdens on the largest part of strata developments.

The proposal also has the advantage of tying into the established set of regulations for approval of bare-land strata plans.²⁶⁶ The *Bare Land Strata Plan Regulations* contain detailed requirements “[i]n considering an application for the approval of a bare land strata plan,”²⁶⁷ which help to ensure that an approving officer isn’t faced with an unstructured call to exercise the officer’s discretion.

264. See *ibid*, s 68 (2) (“If a strata lot is not separated from another strata lot, the common property or another parcel of land by a wall, floor or ceiling, the boundary of the strata lot is as shown on the strata plan.”).

265. Buholzer, *supra* note 214 at § 13.9.

266. See *Bare Land Strata Regulations*, *supra* note 247.

267. *Ibid*, s 3. Note that the regulation also contains detailed provisions on site access and services.

The downsides of this option for reform are similar to the downsides discussed in connection with the previous issue. The option would (at least initially) impose costs and delays on real-estate developers and costs on local governments, though on a smaller scale than would result from adopting a blanket rule that all strata plans require approving-officer approval.²⁶⁸ There may be other legal tools already available to tackle abuses. The act already makes it clear that, when a strata plan departs from the default boundary rule, its boundaries must be approved by a registrar of titles.²⁶⁹ It could be argued that the registrar already performs an adequate gatekeeping function, so requiring another approval (from the approving officer) isn't needed. It could be questioned whether the proposal is in proportion to the problem. There may be legitimate reasons for developing a building strata plan with non-traditional boundaries. If the number of these unconventional, but innocent, strata plans is greater than the number of problematic strata plans, then it could be open to question whether this proposal should impose costs and delays on these developers as a consequence of dealing with the approval problem.

Finally, it's worth bearing in mind the general concern about a targeted approach. This is that it doesn't squarely deal with the underlying incentive to fashion a bare-land strata plan in the building-strata-plan mould, if that characterization means that the strata plan will get a much softer regulatory ride. The concern is that rogue developers could alter their practices slightly, and try to carry on as before.

The committee's recommendation for reform

In the committee's view, the targeted approach of this proposal is the better way to achieve reform and address the broader issue. This proposal should stamp out an unacceptable practice, with relatively little disruption of established practices of land development.

The vast majority of consultation respondents agreed with the committee's approach to this issue.

268. This point is qualified with the words *at least initially* in recognition that proponents of this option would likely argue in response that such costs wouldn't accrue over the long term, as the goal of the option would be to stamp out the fringe of cases in which a bare-land strata plan is characterized as a building strata plan. Once this occurs, it could be argued that developers and local governments shouldn't be saddled with additional costs.

269. See *supra* note 5, s 68 (3) ("A boundary shown on the strata plan must be shown in a manner approved by the registrar.").

The committee recommends:

10. *The Strata Property Act should provide that a strata plan that depicts the boundaries of strata lots as the exterior surface of a floor, wall, or ceiling, or as a boundary external to a building, must meet the same approval requirements as though it were a bare-land strata plan.*

Should the definition of “previously occupied” in section 14.1 of the Strata Property Regulation be amended to exclude temporary construction purposes?

Brief description of the issue

This issue for reform tackles an emerging issue in practice.

Section 242 of the act provides that “[i]f a person applying to deposit a strata plan wishes to include in the strata plan a previously occupied building, the person must submit the proposed strata plan to the approving authority.”²⁷⁰ On the other hand, section 241 provides “[i]f a strata plan includes a building that has not been previously occupied, the plan must be endorsed by a British Columbia land surveyor certifying that the building has not been previously occupied.”²⁷¹

There is a significant difference in oversight between these two tracks. The definition of *previously occupied* can make a substantial difference in the regulatory treatment of a strata plan.

Previously occupied is defined in the *Strata Property Regulation* to mean “occupied at any time in its past for any purpose, including residential, commercial, institutional, recreational or industrial use.”²⁷² But this definition is subject to one exception, which carves out display lots from its scope.²⁷³

Questions have been arising in survey practice about the status of buildings used in construction. Should their status be clarified by making them subject to an exception that’s similar to the one that has been created for display lots?

270. *Ibid*, s 242 (2).

271. *Ibid*, s 241 (1).

272. *Supra* note 6, s 14.1.

273. See *ibid*, s 14.1 (“does not include the occupation of a proposed strata lot by the owner developer solely as a display lot for the sale of strata lots in the proposed strata plan”).

Discussion of options for reform

There are two options to consider for this issue: either amend the definition of previously occupied found in the regulation or retain the status quo.

The main argument in favour of an amendment is that it would help to clarify a difficult area of the law. While no court or tribunal has declared that a structure used in construction has been previously occupied within the terms of the definition, questions have arisen in the survey profession about the definition's reach. Though this may be an emerging issue, the stakes on it are high. Characterization of a structure within a strata plan as previously occupied would result in a significantly more rigorous approval process for that strata plan. Clarity on this point would assist land surveyors, who are called upon to certify when a structure hasn't been previously occupied.

It is difficult to see any downside to amending the regulation.

The committee's recommendation for reform

In the committee's view, the rigorous approval process set out under section 242 of the act should not apply to a structure that has been used for temporary construction purposes. It would be beneficial to amend the regulation to clarify this point.

The committee's proposal garnered near-unanimous support from consultation respondents.

The committee recommends:

11. Section 14.1 of the Strata Property Regulation should be amended to read "For the purposes of sections 241 and 242 of the Act, 'previously occupied' means occupied at any time in its past for any purpose, including residential, commercial, institutional, recreational or industrial use, but does not include the occupation of a proposed strata lot (a) by the owner developer solely as a display lot for the sale of strata lots, or (b) for temporary construction purposes, in the proposed strata plan."

Issues for Reform—Depicting Common Property for Strata Plans

Introduction

Commentators tend to agree that each strata plan must have “two main designations of property”: strata lots and common property.²⁷⁴ As two leading practice guides have noted, “[i]t is not possible to have a strata plan that does not contain some common property”²⁷⁵ and “[a]ll strata plans are required to have common property.”²⁷⁶

Yet section 244 of the *Strata Property Act*, which lists the requirements for strata plans, only mentions common property once. Coming as the last words in the section, *common property* appears as a by-the-way reference in a provision that outlaws the designation of “parking stalls, garage areas, storage areas, and similar areas or spaces,” used in conjunction with a residential strata lot, as a separate strata lot.²⁷⁷ Nowhere in the section is an explicit requirement to include a depiction of common property on a strata plan.²⁷⁸

But this point doesn’t make the earlier comments incorrect. Common property is inherent in the design of the *Strata Property Act*. Foundational provisions in the act contain references to common property.²⁷⁹

274. *British Columbia Strata Property Practice Manual*, *supra* note 2 at § 2.14.

275. *Ibid.*

276. *Land Title Practice Manual*, *supra* note 233, vol 3 at § 53.165A.

277. *Supra* note 5, s 244 (2) (“Parking stalls, garage areas, storage areas and similar areas or spaces intended to be used in conjunction with a residential strata lot must not be designated as separate strata lots but must be included as part of a strata lot or as part of the common property.”).

278. The section does provide that a strata plan must “contain anything that is required by the regulations” (*ibid*, s 244 (1) (j)). While the regulations don’t contain an express requirement to depict common property on a strata plan, they do refer to depicting limited common property. See *Strata Property Regulation*, *supra* note 6, s 14.4 (1) (c) (“the strata plan must show the dimensions of the boundaries of the strata lots and limited common property and, if it is a bare land strata plan, must show the bearings of the boundaries of the strata lots and limited common property”).

279. See e.g. *supra* note 5, ss 3 (“the strata corporation is responsible for managing and maintaining the common property and common assets of the strata corporation for the benefit of the owners”), 66 (“[a]n owner owns the common property and common assets of the strata corporation as a tenant in common in a share equal to the unit entitlement of the owner’s strata lot divided by the total unit entitlement of all the strata lots”), 72 (1) (“the strata corporation must repair and maintain common property and common assets”). See also *Strata Property Regulation*, *supra*

Further support for these comments comes from land-title-office practice. The Land Title and Survey Authority of British Columbia has said that “[s]trata plans that only show the boundaries of strata lots, with no common property delineated, are not shown in a manner approved by the registrar.”²⁸⁰ This practice is based on section 68 (3) of the act,²⁸¹ which deals with strata-lot boundaries and provides that “[a] boundary shown on the strata plan must be shown in a manner approved by the registrar.”²⁸²

That said, the LTSA has also expressed concerns about certain strata plans that appear to skirt the need to delineate common property.²⁸³ The LTSA offered the following as an example of its concerns:

some land surveyors have prepared building strata plans upon which the buildings are not adjoined and

- No common property is delineated, and
- All of the lands outside of the building are designated to be part of the strata lots (i.e., “private yard areas”).

In this circumstance, it is not evident what comprises the common property.²⁸⁴

note 6, s 14.11 (2) (“The registrar must include on any indefeasible title for a strata lot, in the legal description, the words ‘together with an interest in the common property in proportion to the unit entitlement of the strata lot as shown on Form V.’”).

280. Land Title and Survey Authority of British Columbia, Land Title Division, Practice Note 02-12, “Delineating Common Property” (10 October 2012) at 3.

281. See *ibid* at 2–3.

282. *Supra* note 5, s 68 (3).

283. See Practice Note 02-12, “Delineating Common Property,” *supra* note 280 at 2 (“Questions have arisen pertaining to strata plans that do not clearly delineate any part of the lands or buildings as common property. In regards to building strata plans, the strata plan must be interpreted to ascertain what part of the lands or buildings do not compromise part of the strata lots in order to identify what comprises the common property.”).

284. *Ibid*. The reference to “private yard areas” appears to derive from the previous legislation. See *Condominium Act*, *supra* note 28, s 6 (2) (c) (“the boundaries of a strata lot shall be defined . . . (c) where the strata lot includes balconies, patios, *private yard areas*, garages, parking spaces, storage areas and other areas and spaces not enclosed by floors, walls or ceilings, in any manner approved by the registrar” [emphasis added]).

Should the Strata Property Act expressly require a strata plan to include a depiction of part of the lands or building as common property?

Brief description of the issue

Section 244 contains a long list of requirements for a strata plan, but nowhere among them is an express requirement to depict common property. This is so despite the act's implicit characterization of common property as an essential ingredient of a strata property. Should section 244 be amended to contain an express requirement to depict common property on a strata plan?

Discussion of options for reform

This issue is a bridge between the last set of issues (on emerging issues in subdivision control) and this set (on common property). Creating a strata plan with no clear depiction of common property is one of the ways in which what may functionally be a bare-land strata plan could be characterized as a building strata plan.

Apart from concerns about subdivision control, the LTSA is also on the record as disapproving this approach as a matter of land-title practice.²⁸⁵ The LTSA's position is based on an interpretation of section 68 (3) of the act, which deals with strata-lot boundaries.²⁸⁶ An express provision that is directly on point would add more support for the LTSA's position.

The downsides of this option for reform differ from those discussed in the preceding issues for reform. Because this option doesn't involve an expansion of a regulatory process it doesn't carry with it obvious costs and burdens for real-estate developers and others. The disadvantage is this approach is that it may be too modest. It isn't clear that anyone is calling for this specific amendment. It also isn't clear that it is needed. An argument could be made that section 68 (3) already gives the LTSA enough authority to deal with the issue. Finally, such a provision could be side-stepped by a rogue developer by simply including a trivial amount of common property on a strata plan.

The committee's recommendation for reform

The committee favoured this proposed reform. It would help to bring some clarity to the act's requirements. In addition, this proposed reform, coupled with the preced-

285. See Practice Note 02-12, "Delineating Common Property," *supra* note 280.

286. See *ibid* at 3.

ing tentative recommendation, should provide some assistance in stamping out questionable subdivision practices.

The vast majority of consultation respondents supported the committee's tentative recommendation. But a handful of respondents raised some concerns about the scope of this proposal, as potentially requiring an exhaustive catalogue of all common property in a strata plan. To address these concerns, the committee decided to make a small change to the language of its recommendation, emphasizing the limited nature of this recommendation.

The committee recommends:

12. The Strata Property Act should expressly require a strata plan to include a depiction of part of the lands or building as common property.

Issues for Reform—Depicting the Vertical Limits of Limited Common Property for Strata Plans

Introduction

It's commonly understood that "by definition, limited common property must be shown on a strata plan and so it cannot be a vertical surface such as the exterior building wall above the balcony."²⁸⁷ But, that said, there can be difficulties in determining the vertical limits of the property depicted on a strata plan. In part to alleviate these difficulties, the LTSA has issued a practice note on cross-sections on strata plans.²⁸⁸ "Generally," the LTSA observes, "cross sections assist in clearly identifying the boundaries between individual strata lots and common property, including the clarification of their vertical limits."²⁸⁹

Boundaries that are less than clearly defined can raise general concerns in the marketplace, as purchasers may be left with inaccurate assumptions about the extent of the interest in land being purchased. They can also create problems for the operation of a strata corporation, breeding confusion (in particular) over the responsibility to repair and maintain a specific part of the strata property.

287. *Rawle v The Owners, Strata Plan NWS 3423*, 2017 BCCRT 15 at para 31.

288. Land Title and Survey Authority of British Columbia, Land Title Division, Practice Note 01-12, "Cross Sections on Strata Plans" (7 March 2012).

289. *Ibid* at 1.

As the LTSA noted, “[h]istorically, land surveyors have not always included cross sections nor have land title offices required them.”²⁹⁰ But in 2012 the LTSA moved to require them, “[d]ue to the increasing complexity of building strata plans being filed in the land title offices, and subsequent *Strata Property Act* applications being filed affecting the strata lots and/or the common property.”²⁹¹

Should the Strata Property Act require strata plans to include a cross-section?

Brief description of the issue

The LTSA has called for the use of cross-sections in strata plans. Should amendments be made to the *Strata Property Act* to support this call, or to otherwise promote clarity in depicting the vertical limits of limited-common-property designations?

Discussion of options for reform

One option to address this issue would be to enshrine the LTSA’s practice in legislation, by making the *Strata Property Act* require cross sections on strata plans as a means to clarify the vertical limits of limited common property. This option has the advantage of drawing on an existing practice that has been in place since 2012. It can be seen as a relatively cautious extension of the law, which will bring an incremental increase in clarity.

There are potential downsides to this option. It would be unusual for the *Strata Property Act* to address what can be considered as a land-surveying issue at such a detailed level. Legislation could be seen as being too rigid, imposing a one-size-fits-all rule on a process that currently has some flexibility.²⁹² Conversely, it could also be argued that the current law allows the registrar to address this matter in a practical way. So it isn’t clear what would be gained by having the *Strata Property Act* set out a provision on this issue.

290. *Ibid.*

291. *Ibid.*

292. See *ibid* at 2 (“Land surveyors who feel a cross section is not warranted may seek pre-approval from the registrar prior to submitting the plan. The land surveyor must clearly describe in their request to the registrar the reasons why a cross section is not required on that particular plan. If satisfied, the registrar will provide written authorization that a cross section is not required for the land surveyor to include with the submission of a strata plan.”).

The committee's recommendation for reform

The committee viewed including a requirement to include at least one cross-section on a strata plan as a useful reform, one that would bring some clarity to an area that's often fraught with confusion. Such a requirement wouldn't be out of keeping with the already-existing list of strata-plan requirements in the *Strata Property Act*.²⁹³

This proposal attracted the support of a strong majority of consultation respondents.

The committee recommends:

13. Section 244 (1) of the Strata Property Act should be amended to provide that all strata plans are required to include a minimum of one cross-section.

Should the Strata Property Regulation require strata plans to include representations to identify limited common property?

Brief description of the issue

This issue is linked to the previous one. While the *Strata Property Act* sets out a broad list of strata-plan requirements,²⁹⁴ the *Strata Property Regulation* contains many of the nuts-and-bolts details of those requirements.²⁹⁵ Should any of these requirements be amended to clarify the depiction of limited common property and to support the requirement to include at least one cross-section on a strata plan?

Discussion of options for reform

The discussion of options for this issue is substantially similar to the discussion of the options for the previous issue. Amending the regulation holds out the prospect of clarifying a difficult area of the law. Amendments would also help to implement the legislative change recommended for the previous issue. The potential downsides of the proposed reform are that it could rob practitioners of some flexibility in putting together strata plans and could be seen as an intrusion into an area better covered by technical standards.

293. *Supra* note 5, s 244 (1).

294. See *ibid*, s 244 (1).

295. See *supra* note 6, s 14.4 (1).

The committee's recommendation for reform

In the committee's view, amending the regulation would offer the chance to provide more detail and further clarify the law. With proposals to amend the act and the regulation, the committee is of the view that it has developed a framework for this area. This framework may help to support further developments in other areas, such as surveying guidelines.²⁹⁶

This proposal commanded nearly unanimous support in the public consultation.

The committee recommends:

14. Section 14.4 (1) (i) of the Strata Property Regulation should be amended to read: "the strata plan must include any representations, including cross-section drawings of the building, to identify and locate the common property, including the limited common property, and the strata lots and floors within the building."

Should the Strata Property Act require that, when limited common property is designated by a 3/4 vote, the sketch plan that must be filed in the land title office must be prepared by a British Columbia land surveyor?

Brief description of the issue

Even though this issue flowed from the committee's discussion of the previous two, it is somewhat broader in scope, taking in the designation of limited common property generally, not just the depiction of its vertical limits. When common property is designated as limited common property by a resolution passed by a 3/4 vote at an annual general meeting or a special general meeting, the act requires that resolution to be filed in the land title office with a "sketch plan."²⁹⁷ *Sketch plan* is a defined term,²⁹⁸ but there is nothing in this definition or in the *Strata Property Act* that sets out who is required to prepare the sketch plan. Should the act be amended to provide that the sketch plan, in these circumstances, must be prepared by a British Columbia land surveyor?

296. See Association of British Columbia Land Surveyors, *Survey and Plan Rules* (version 1.1, 6 September 2018), online: <www.abcls.ca/wp-content/uploads/2018/11/SPR-V1.1-18-09-06-1.pdf> [perma.cc/6Y4E-4UMS].

297. See *supra* note 5, s 74 (2).

298. See *Land Title Act*, *supra* note 19, s 1 "sketch plan" ("means an adequately dimensioned drawing of the area affected by a lease of all or part of a building located on land shown on a plan of survey deposited in the land title office").

Discussion of options for reform

The goal of this proposed reform would be to promote accuracy in the recording of limited common property, which would cut down on confusion and forestall potential disputes. This would be of considerable assistance for more than just the depiction of limited common property; it would enhance understanding of limited common property in general. As members of a recognized profession, land surveyors are required to meet stringent standards in the preparation of survey documents. Their involvement in this process would be a safeguard against confusion and inaccuracy.

There are potential downsides to this proposed reform. It could add time to the process of designating limited common property and could make that process more expensive. The act already recognizes that there is level of informality in this process by calling for the filing of a sketch plan. An argument could be made that limiting who could prepare these sketch plans would be a regulatory overreach.

The committee's recommendation for reform

The committee decided that the act should provide that a sketch plan filed under section 74 should be prepared by a land surveyor. This requirement should enhance the accuracy of these sketch plans and strengthen the integrity of designations of limited common property.

The tentative recommendation for this issue in the consultation paper had the support of an overwhelming majority of consultation respondents.

The committee recommends:

15. Section 74 (2) of the Strata Property Act should be amended by adding the following as paragraph (d): "is prepared by a British Columbia land surveyor."

Issues for Reform—Certificate of Payment

Introduction

A Certificate of Payment is, in simple terms, a prescribed form issued by a strata corporation certifying whether or not a strata-lot owner owes money to the strata corporation.²⁹⁹ A Certificate of Payment must be given to a registrar of land titles in conjunction with the deposit of any of the following documents for registration:

²⁹⁹. See *Strata Property Act*, *supra* note 5, s 115; *Strata Property Regulation*, *supra* note 6, Form F.

- a lease of a strata lot;
- an assignment of a lease of a strata lot;
- an agreement for sale of a strata lot;
- a conveyance of title to a strata lot.³⁰⁰

In the absence of a Certificate of Payment, the act directs the registrar not to accept any of these listed documents for registration.³⁰¹

This provision has been considered in three court decisions involving foreclosure by a mortgage lender—a pair of cases³⁰² before a master of the court³⁰³ and a “rehearing” of the master’s decision in one of these cases by a supreme-court justice.³⁰⁴ All three decisions held that a Certificate of Payment isn’t required when title to a strata lot changes hands under a court order.

For the three decisions, arriving at this conclusion was a matter of interpreting the relevant provisions from the *Strata Property Act* and the *Land Title Act*. In two of these decisions, the master remarked that the logical progression was “unassailable,”³⁰⁵ leading from these premises to the conclusion:

300. *Strata Property Act*, *supra* note 5, s 256 (1).

301. See *ibid.*

302. See *CIBC Mortgage Corp v Spreeuw*, 2001 BCSC 1729 57 [*Spreeuw*]; *Peoples Trust Co v Meadowlark Estates Ltd*, 2003 BCSC 1321 [*Meadowlark Estates Master*].

303. See *Supreme Court Act*, RSBC 1996, c 443, s 11 (7) (“A master has, subject to the limitations of section 96 of the *Constitution Act, 1867*, the same jurisdiction under any enactment or the Rules of Court as a judge in chambers unless, in respect of any matter, the Chief Justice has given a direction that a master is not to exercise that jurisdiction.”); Supreme Court of British Columbia, *Practice Direction: Masters’ Jurisdiction* (PD-50) (effective date: 15 May 2016) at 1 (setting out direction “as to the matters in respect of which a master is not to exercise jurisdiction”). See also G Peter Fraser, John W Horn, & Susan A Griffin, *The Conduct of Civil Litigation in British Columbia*, 2nd ed, vol 1 (Markham, ON: LexisNexis Canada, 2007) (loose-leaf updated June 2018, release 28) at § 5.5 (“In British Columbia these constitutional limitations have led to the principle that a master has jurisdiction to make orders which are not final and also to make orders which are final but where there has been, in the proceeding, no dispute on the facts or the law. . . . A master may hear a foreclosure application where no matter is contested or where there is no triable issue.” [footnotes omitted]).

304. See *Peoples Trust Co v Meadowlark Estates Ltd*, 2005 BCSC 51 [*Meadowlark Estates SC*].

305. *Spreeuw*, *supra* note 302 at para 12, Master Bolton; *Meadowlark Estates Master*, *supra* note 302 at para 5, Master McCallum.

- section 256 of the *Strata Property Act* requires submission of a Certificate of Payment in order to register “a conveyance of title to a strata lot”;³⁰⁶
- section 1 of the *Strata Property Act* defines conveyance to mean (among other things) “a transfer of a freehold estate in the strata lot”;³⁰⁷
- section 1 of the *Land Title Act* contains two defined terms: *transfer* (which “includes a conveyance”)³⁰⁸ and *transmission* (which “means a change in ownership . . . under an order of a court”);³⁰⁹
- section 3 of the *Land Title Act* provides that the *Land Title Act* applies to the *Strata Property Act* “unless inconsistent with that Act.”³¹⁰

Therefore, because “[t]here is no inconsistency between the Acts in this context,”³¹¹ the distinction between a transfer and a transmission applies to section 256 of the *Strata Property Act*, limiting its scope to cases involving “voluntary”³¹² transfers of title and not transmissions. Since a sale in a foreclosure proceeding is a transmission (“a change in ownership under an order of the court”), the registrar is not required to receive a Certificate of Payment in order to register the transmission of ownership.³¹³

306. *Supra* note 5, s 256 (1) (d) [emphasis added].

307. *Ibid*, s 1 (1) “convey” and “conveyance” [emphasis added] (“when referring to the conveyance of a strata lot to a purchaser, means any of the following in respect of which an application to the land title office has been made to register: (a) a transfer of a freehold estate in the strata lot; (b) an agreement for sale of the strata lot; (c) an assignment of a purchaser’s interest in an agreement for sale of the strata lot; (d) an assignment of a strata lot lease in a leasehold strata plan”).

308. *Supra* note 19, s 1 “transfer” (“includes a conveyance, a grant and an assignment”).

309. *Ibid*, s 1 “transmission” (“means a change of ownership (a) effected by the operation of an Act or law, (b) under an order of a court, or (c) consequent on any change in the office of a personal representative or trustee, but does not include (d) an amalgamation of 2 or more corporations, however effected, whether or not the amalgamation is in respect of a beneficial or a trust estate or interest in land, or (e) an amalgamation under the *Strata Property Act*”).

310. *Ibid*, s 3 (1) (“This Act, except Parts 7 and 8, applies to the *Strata Property Act*, unless inconsistent with that Act.”).

311. *Spreeuw*, *supra* note 302 at para 10.

312. *Meadowlark Estates SC*, *supra* note 304 at para 24.

313. See *Spreeuw*, *supra* note 302 at para 11; *Meadowlark Estates Master*, *supra* note 302 at para 5; *Meadowlark Estates SC*, *supra* note 304 at para 34.

When the issue is diagrammed in this way, it can seem abstract and bloodless. But, as each of the decisions pointed out,³¹⁴ what is really at stake here is a contest between two creditors—the strata corporation and the mortgage lender—when there isn't enough money to satisfy both of them.³¹⁵ Section 116 (5) of the *Strata Property Act* gives the strata corporation priority over most other creditors (including priority over mortgage lenders) for amounts that it may include in its lien on a strata lot.³¹⁶ But in some cases a strata-lot owner owes the strata corporation money and the amount can't be included in the lien.³¹⁷ That is what happened in each of these cases, in which there were amounts owing for fines due to bylaw contraventions.

When this occurs, the requirement to provide the registrar with a Certificate of Payment can have the effect of determining priority between the strata corporation and the mortgage lender. If the Certificate of Payment is required in these circumstances, then the strata corporation will be paid first, because it won't issue the certificate unless it is paid in full for any amounts owing.³¹⁸ But if the Certificate of

314. See *Spreeuw*, *supra* note 302 at para 3; *Meadowlark Estates Master*, *supra* note 302 at paras 2, 8; *Meadowlark Estates SC*, *supra* note 304 at para 2.

315. See *Spreeuw*, *supra* note 302 at para 3 (“Although a strata corporation has a lien for its basic fees which has priority over prior mortgages, an owner may owe additional monies for such items as penalties, interest and costs which do not form part of the corporation’s priority claim. A dispute often arises in foreclosure actions involving strata properties, when the strata corporation has been paid to the extent of its priority claim, but is still owed money for these additional items by the owner. In those circumstances, the corporation will often (or always) decline to issue the Form F, on the sensible premise that they cannot certify that no monies are owing when that is not, in fact, the case. The Land Title Office will not accept for registration a vesting order relating to strata property without a Form F. Consequently, the petitioners either have to pay the fees to the corporation, or pay them into court and then make a subsequent, expensive application to have the monies paid out because of their priority.”).

316. See *supra* note 5, s 116 (5) (“The strata corporation’s lien ranks in priority to every other lien or registered charge except (a) to the extent that the strata corporation’s lien is for a strata lot’s share of a judgment against the strata corporation, (b) if the other lien or charge is in favour of the Crown and is not a mortgage of land, or (c) if the other lien or charge is made under the *Builders Lien Act*.”).

317. See *ibid*, s 116 (1) (“The strata corporation may register a lien against an owner’s strata lot by registering in the land title office a Certificate of Lien in the prescribed form if the owner fails to pay the strata corporation any of the following with respect to that strata lot: (a) strata fees; (b) a special levy; (c) a reimbursement of the cost of work referred to in section 85; (d) the strata lot’s share of a judgment against the strata corporation.”).

318. Since the form actually calls on the strata corporation to certify that the owner either “(a) does not owe money to the strata corporation, or (b) does owe money but (i) the money claimed by the strata corporation has been paid into court, or to the strata corporation in trust, under section 114 of the *Strata Property Act*, or (ii) arrangements satisfactory to the strata corporation have been made to pay the money owing,” an argument could be mounted that the strata corpo-

Payment isn't required, then the strata corporation will only be paid first to the extent of any amounts owing under its lien. Any other amounts it is owed will effectively rank in priority behind the amounts owing to the mortgage lender. This was the result in two of the three cases: the amounts owing on the mortgages were paid before fines owing to the strata corporations (which meant, because there wasn't enough money to satisfy all debts, the strata corporations weren't able to collect the full amount owing for fines).³¹⁹

Should a Form F (Certificate of Payment) be required when a transfer of a strata lot takes place under a court order?

Brief description of the issue

An amendment to the *Strata Property Act* would essentially reverse the results in the cases discussed earlier. Should the act expressly spell out that a Certificate of Payment is required to register a change in ownership upon a transmission of title to a strata lot?

Discussion of options for reform

In broad terms, there are two options to consider here: either amend the *Strata Property Act* to make it clear that a Certificate of Payment must be included when a transmission of title to a strata lot is deposited for registration in the land title office or retain the status quo.

The policies supporting the current law were discussed in the judicial decision in *Meadowlark Estates*.³²⁰ The court noted that its conclusion that a transmission of title need not be accompanied, upon deposit for registration, by a Certificate of Payment is supported by the *Strata Property Act's* system for balancing creditors' priori-

ration *can't* give the form when it knows there is money owing and neither of the arrangements mentioned in paragraph (b) has been made. See *Strata Property Regulation*, *supra* note 6, Form F.

319. See *Meadowlark Estates Master*, *supra* note 302 at para 8; *Meadowlark Estates SC*, *supra* note 304 at para 34. In *Spreeuw*, *supra* note 302, the master declined to decide the issue "for purely procedural reasons": "In my view, this is, in substance and effect, a mandatory order requiring the Land Title Office to do an act which that office, to date, has presumably considered to be contrary to law. In the circumstances, I do not believe it is either appropriate or possible to make the order sought in the present proceedings. An application under Rule 63 [now *Supreme Court Civil Rules*, BC Reg 168/2009, r 21-3] for relief in the nature of mandamus must be brought before this court may properly direct the Crown to perform a specified act." (*Spreeuw*, *supra* note 302 at para 14.)

320. See *supra* note 304 at paras 25–30.

ties under the strata corporation's lien.³²¹ "The purpose of filing the lien," the court observed, "must be to provide notice to any interested party of the fact and amount of the strata corporation's claim."³²² This purpose would be undermined if the act gave the strata corporation priority over other secured creditors for amounts not included in the lien. Further, it could also create a disincentive to filing the lien at all, as the strata corporation could simply choose to rely on the need to give a Certificate of Payment upon transmission.³²³

Arguments that could be seen as supporting reform of the legislation have also appeared in the court cases. These arguments tend to turn on the basic "fairness" of requiring a Certificate of Payment and effectively giving the strata corporation's claims priority in contested circumstances.³²⁴ (For example, in the court decisions discussed earlier, the strata corporations' finances had apparently been severely strained. A strata corporation may find itself in such straits when its repair obligations overwhelm its resources.)³²⁵

The committee's recommendation for reform

The committee gave this issue extensive consideration. While it was sympathetic to strata corporation's plight in these circumstances (as the requirement to provide a Certificate of Payment would often be the only practical way to ensure that it's advised of a change of ownership of a strata lot), it ultimately had too many concerns about meshing this proposed requirement with the realities of foreclosure litigation and about the effect of it on other creditors.

While a majority of consultation respondents supported the committee's proposal, a sizeable minority disagreed. These respondents tended to favour giving strata corporations a greater reach in collecting money due to them.

The committee recommends:

16. The Strata Property Act should continue not to provide that a registrar of titles must only accept a transmission of a strata lot for registration in the land title office if it is accompanied by a current Certificate of Payment.

321. See *ibid* at para 28.

322. *Ibid* at para 30.

323. See *ibid* at para 29 ("If [the strata corporation's] argument is correct, there is no point to a strata corporation filing a lien under section 116. They would be able to withhold a Form F even without filing a lien for the charges which can be subject to lien.").

324. *Meadowlark Estates Master*, *supra* note 302 at para 12.

325. See *ibid*.

Chapter 5. Fundamental Changes

Meaning of “Fundamental Changes”

The words *fundamental change* are not found in the *Strata Property Act*. They refer to a concept that can be used in analyzing the act, grouping together certain transactions that may be said to profoundly transform the nature and qualities of a given strata property.³²⁶ Since *fundamental change* doesn’t have a legislative definition, its meaning can be somewhat elastic.

Transactions Classified as Fundamental Changes

Because *fundamental change* is a flexible concept, the committee began its review by considering the types of transactions that could be classified as fundamental changes. Its starting place was to examine those transactions that must be authorized by a resolution that achieves the highest voting threshold in the *Strata Property Act*: a resolution passed by a unanimous vote. Then it considered whether any other transactions (which don’t require authorization by a resolution passed by a unanimous vote) have features that would lead them to be classified as fundamental changes.

Transactions requiring authorization by a resolution passed by a unanimous vote

The act defines *unanimous vote* to mean “a vote in favour of a resolution by all the votes of all the eligible voters.”³²⁷ If a strata lot has more than one owner, than all of

326. See e.g. *British Columbia Strata Property Practice Manual*, *supra* note 2 at ch 23 (describing amendment of strata plans, amalgamation of stratas, and termination of stratas as fundamental changes).

327. *Supra* note 5, s 1 (1) “unanimous vote.” *Eligible voters* is defined to mean “persons who may vote under sections 53 to 58” of the act (*ibid*, s 1 (1) “eligible voters”). Most of the people who would be considered *eligible voters* are strata-lot owners, but the expression is broad enough to capture, in certain circumstances, tenants, mortgagees, parents or guardians, and court-appointed voters (see *ibid*, ss 54, 55, 58). A strata-lot owner may lose the right to vote on certain resolutions if the strata corporation is “entitled to register a lien against [the owner’s] strata lot under section 116 (1)” and the strata corporation has a bylaw providing that the owner’s vote may not be exercised in these circumstances, but this provision doesn’t apply to a resolution that must be passed by a unanimous vote (*ibid*, s 53 (2)–(3)).

these co-owners must be in favour of the resolution for it to be passed by a unanimous vote.³²⁸

The act allows a strata corporation that consists of 10 or more strata lots to apply to the supreme court if almost all of the eligible voters support a resolution that must be passed by a unanimous vote.³²⁹ Under this application, the strata corporation may ask the court for “an order providing that the vote proceed as if the dissenting voter or voters had no vote.”³³⁰ The legislation authorizes the court to make this order “if [it is] satisfied that the passage of the resolution is in the best interests of the strata corporation and would not unfairly prejudice the dissenting voter or voters.”³³¹ Strata corporations consisting of fewer than 10 strata lots aren’t allowed to use this provision.³³²

The following transactions require authorization by a resolution passed by a unanimous vote.

Table 1. Transactions requiring authorization by a resolution passed by a unanimous vote

SPA section	Description
10	restricting strata corporation’s power to contract during period after first conveyance of a strata lot but before first AGM with owner-developer or person not at arm’s length with owner-developer—such contract or transaction may be approved by a resolution passed by a unanimous vote at a special general meeting
11 (c)	approving resolution ordinarily requiring passage by a 3/4 vote—other than a resolution to amend the bylaws in a wholly nonresidential strata corporation or the non-residential section bylaws in a strata corporation with residential and nonresidential sections—during the period after the first conveyance of a strata lot but before the first AGM
70 (4) (b)	amending the Schedule of Unit Entitlement if a strata-lot owner wishes to increase or decrease the habitable area of a residential strata lot

328. See *ibid*, s 57 (2) (“If the chair is advised before or during a vote that the 2 or more persons who share the one vote disagree on how their vote should be cast on a matter, the chair must not count their vote in respect of that matter.”).

329. See *ibid*, s 52. The voting threshold that must be reached for this application to be made to court is defined in the legislation as “all of the strata corporation’s votes except for (a) the vote in respect of one strata lot, in a strata corporation comprised of at least 10 strata lots, or (b) the votes in respect of more than one strata lot, if those votes together represent less than 5% of the strata corporation’s votes” (*ibid*, s 52 (2)).

330. *Ibid*, s 52 (3).

331. *Ibid*, s 52 (3).

332. See *ibid*, s 52 (1).

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SPA section	Description
100	changing the basis on which a strata lot's share of the contribution to the strata corporation's operating fund and contingency reserve fund is calculated
108 (2) (b)	changing the basis on which a strata lot's share of a special levy is calculated
127 (1)	amending bylaws in the period before the second AGM in a bare-land or wholly residential strata corporation
127 (3) (a)	amending bylaws in the period before the second AGM in a strata corporation with residential and nonresidential strata lots and without sections
127 (4) (a)	amending bylaws in the period before the second AGM in a strata corporation with separate residential and nonresidential sections—resolution passed by a unanimous vote required in residential section only
214 (3)	authorizing a leasehold landlord to change the basis for calculating the purchase price of a leasehold tenant's interest in a leasehold strata lot on termination of a leasehold strata property set out in a schedule to a ground lease
257 (a)	amending a strata plan to designate limited common property or to remove a designation of limited common property
259 (3) (a)	amending a strata plan to add to, consolidate, or divide a strata lot, if the amendment would have the effect of decreasing the relative voting power of the other strata lots, increasing the share of common expenses borne by the other strata lots, or decreasing the relative unit entitlement of the other strata lots
261 (1) (a)	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 unit entitlement has been calculated on the basis of habitable area
262 (3) (b)	amending a strata plan to add land held in the name of or on behalf of a strata corporation and not shown on the strata plan to a strata lot or to create a new strata lot, the amendment would have the effect of decreasing the relative voting power of the other strata lots, increasing the share of common expenses borne by the other strata lots, or decreasing the relative unit entitlement of the other strata lots
263 (2) (a)	amending a strata plan to add a strata lot or part of a strata lot to the common property

The committee began its review of fundamental changes by initially classifying each of these transactions as a fundamental change requiring further study.

Other transactions

In addition to the transactions listed in the previous section, other transactions set out in the act could also be classified as a fundamental change if they profoundly changed the nature and qualities of a given strata corporation. This could be so, even

if the transaction doesn't require authorization by a resolution passed by a unanimous vote.

The one transaction that meets this standard is amalgamation.³³³ Even though an amalgamation of two or more strata corporations may be authorized by a resolution passed by a 3/4 vote,³³⁴ the resulting transaction will have the effect of profoundly transforming the amalgamating strata corporations in a manner that is in the range of the transformations listed in the previous section.³³⁵

Scope of this Chapter

From this starting place, the committee narrowed the scope of this chapter to just those areas of the law that are most in need of reform. In the committee's view, these areas are the following three:

- amending a strata plan;
- schedules to the strata plan;
- amalgamation.

The main concern for each of these areas is with the voting threshold of the resolution needed to authorize a transaction. In most cases, that resolution must be passed by a unanimous vote. So the question becomes whether that threshold could be lowered. This would mirror developments for termination, where the voting threshold was recently lowered from unanimous vote to 80-percent vote.³³⁶ In one case (amalgamation) the question is whether to raise a 3/4-vote threshold to an 80-percent vote.

Issues for Reform—Amending a Strata Plan

Introduction

The *Strata Property Act* has an extensively detailed set of provisions on amending strata plans.³³⁷ The act doesn't contain a general procedure for amending a strata

333. See *Strata Property Act*, *ibid*, ss 269–271.

334. See *ibid*, s 269 (2) (a).

335. See *ibid*, s 271 (effect of amalgamation).

336. See *ibid*, ss 272 (1), 277 (1).

337. See *ibid*, ss 257–268.

plan. Instead, it contains procedures designed to obtain a specific result in a defined circumstance. And, in some cases, the strata corporation is able to obtain a similar result by using other procedures in the act, which don't involve amending the strata plan. This system can be somewhat difficult to grasp.

Overview of the Strata Property Act's provisions on amending a strata plan

Introduction

Legislation enabling the amendment of strata plans has been a feature of British Columbia's strata-property legislation since its inception in 1966. This legislation has followed a familiar pattern of development. The first-generation act contained a handful of provisions with little procedural detail.³³⁸ The range of provisions was expanded and some of the procedural detail was filled in with the advent of the second-generation act.³³⁹ As that act was amended, still more provisions were added to the legal framework.³⁴⁰

Nevertheless, as the third generation of British Columbia's legislation was being developed in the 1990s there was a sense that the approach to amending a strata plan needed a major overhaul.

In the run-up to the enactment of the *Strata Property Act*, the ministry of finance identified concerns with the approach to amending a strata plan that the new act would remedy.³⁴¹ The concerns focused on the perceived failure of the previous legislation to provide "sufficient flexibility" for strata corporations that wished to amend their strata plans.³⁴² Specifically, the ministry's discussion paper cited: (1) a failure to "anticipate all types of potential reorganization" that should be addressed by the legislation; and (2) a failure to allow strata-lot owners "to proceed independently or with other relevant owners without involving the strata corporation,"

338. See *Strata Titles Act*, *supra* note 25, ss 4 (4) (a) (transfer of common property by strata corporation), 4 (4) (b) (transfer of lands to strata corporation), 16 (1) (resubdivision of strata lot). *Resubdivision* involved changing the boundaries of a strata lot.

339. See *Strata Titles Act*, *supra* note 26, ss 12 (disposition of common property), 14 (acquisition of property), 31 (resubdivision of strata lots). Limited common property also makes its first appearance in this act, but at this point it didn't involve amending a strata plan (see *ibid*, s 29).

340. See *Strata Titles Amendment Act 1977 (No 2)*, *supra* note 26, ss 9 (disposition of common property), 11 (acquisition of property), 26 (resubdivision and consolidation of strata lots).

341. See British Columbia, Ministry of Finance and Corporate Relations, *Discussion Paper: Amendments to the Condominium Act* (October 1990).

342. *Ibid* at 23.

in circumstances in which the strata-plan amendment “does not affect the strata corporation.”³⁴³

The result is that the act contains procedures for amending strata plans in the following cases:

- to designate limited common property;
- to add to, consolidate, or divide a strata lot;
- to make land held by the strata corporation into a new strata lot;
- to add a strata lot to common property;
- to make common property into land held by the strata corporation; and
- to add land held by the strata corporation to the common property.³⁴⁴

Each case has distinctive procedures, requirements, and circumstances that are summarized in the sections that follow.

Common procedural elements

Before discussing the distinctive aspects of each of the listed procedures, this section describes some elements that appear repeatedly in all of the procedures, except for one outlier—amending a strata plan to make common property into land held by the strata corporation.³⁴⁵

First, in each case, a resolution is required to authorize the amendment. As there is considerable diversity in the types of resolutions required by the legislation, this requirement is discussed in each of the sections that follow.

Second, an application to amend a strata plan must in each case, of course, include a plan. At a minimum, the procedures call for a reference plan or an explanatory plan.³⁴⁶ In one case, the procedure requires one of a reference, explanatory, or subdivision plan.³⁴⁷ The specific type of plan that must be filed under a given procedure

343. *Ibid.*

344. *Land Title Practice Manual*, *supra* note 233, vol 3 at § 53.747.

345. See *Strata Property Act*, *supra* note 5, s 265 (the amendment requires a subdivision of common property, so its procedures track those applicable to the subdivision of land).

346. See *ibid*, ss 257 (b) (i), 259 (3) (b) (i), 262 (3) (c) (i), 263 (2) (b) (i), 266 (3) (b) (i).

347. See *ibid*, s 259 (3) (b) (i) (amending strata plan to add to, consolidate, or divide strata lot). See also *Land Title Act*, *supra* note 19, ss. 1 “explanatory plan” (“means a plan that (a) is not based on a survey but on existing descriptions, plans or records of the land title office, and (b) is certified

is, in all cases, “whichever [one] the registrar requires.”³⁴⁸ Under all the procedures, the plan filed must be one that

- shows the amendment, and
- is in a form required under the *Land Title Act* for [the type of plan filed].³⁴⁹

Under some of the procedures that plan is also required to comply, “as far as the registrar considers necessary,”³⁵⁰ with the general requirements in the *Strata Property Act* for strata plans and accompanying documents.³⁵¹

Third, if the strata-plan amendment changes the unit entitlement or voting rights of any strata lot, then a new Schedule of Unit Entitlement or a new Schedule of Voting Rights must be included in the application, along with “evidence of the superintendent [of real estate’s] approval” of the changes.³⁵²

Finally, each procedure requires a Certificate of Strata Corporation (which is a prescribed form under the act), certifying that the appropriate resolution has been passed and that the plan (and any supporting document) submitted conforms to the resolution.³⁵³

Designating limited common property

The act allows for the amendment of a strata plan to designate limited common property or to remove a designation of limited common property.³⁵⁴ *Limited com-*

correct in accordance with the records of the land title office by a British Columbia land surveyor or by (i) a person designated under section 121 (7) of the *Forest Act* for the purpose of that section, or (ii) the minister charged with the administration of the *Transportation Act*”, 67 (requirements as to subdivision and reference plans); *Land Title Practice Manual, supra* note 233, vol 1 at §§ 7.487 (“A reference plan is based on a ground survey done by a British Columbia land surveyor and generally refers to a single parcel.”), 7.491 (“A subdivision plan is based on a ground survey and creates new parcels for which the registrar registers title. A British Columbia land surveyor prepares a subdivision plan.”).

348. See *supra* note 5, ss 257 (b) (i), 259 (3) (b) (i), 262 (3) (c) (i), 263 (2) (b) (i), 266 (3) (b) (i).

349. *Ibid*, ss 257 (b) (i) (A)–(B), 259 (3) (b) (i) (A), (C), 262 (3) (c) (i) (A), (C), 263 (2) (b) (i) (A), (C), 266 (3) (b) (i) (A), (C).

350. *Ibid*, ss 259 (3) (b) (i) (B), 262 (3) (c) (i) (B), 263 (2) (b) (i) (B), 266 (3) (b) (i) (B).

351. See *ibid*, ss 244–245.

352. *Ibid*, ss 259 (3) (b) (iii), (iv), 262 (3) (c) (iii), (iv), 263 (2) (b) (ii), (iii).

353. See *ibid*, ss 257 (b) (ii); 259 (3) (b) (v) (but only “if approval of the amendment is required”), 262 (3) (c) (v), 263 (2) (b) (iv), 266 (3) (b) (ii).

354. See *ibid*, s 257. See, above, at 29–31 (general discussion of limited common property).

mon property is “common property designated for the exclusive use of the owners of one or more strata lots.”³⁵⁵

A strata corporation that wants to amend its strata plan to designate limited common property or to remove that designation must complete the common procedural elements discussed in the previous section. The key element to bear in mind here is that the strata-plan amendment must be authorized by “a resolution approving the amendment . . . passed by a unanimous vote at an annual or special general meeting.”³⁵⁶

This element is important to note in light of the fact that the act contains two other ways to designate limited common property, neither of which involves amending the strata plan or obtaining a resolution passed by a unanimous vote. The owner-developer may designate limited common property on the strata plan at the time it is deposited in a land title office. Strictly speaking, no amendment of the strata plan occurs here, since that plan that is being dealt with is what may be called the original strata plan.

The act also permits the designation of limited common property by a way of a resolution passed at a general meeting by a 3/4 vote.³⁵⁷ Although this procedure does call for the filing of a sketch plan in the land title office,³⁵⁸ it does not require or result in the amendment of the strata plan.³⁵⁹ A parallel procedure for removing a designation of limited common property by way of a resolution passed by a 3/4 vote is unavailable if the designation was made by the owner-developer when the strata plan was deposited or by amendment of the strata plan.³⁶⁰

And finally, the act has a special set of rules that apply to one specific circumstance involving amending a strata plan to designate limited common property. This circumstance occurs when an owner-developer amends the strata plan at a time after

355. *Ibid*, s 1 (1) “limited common property.” See, above, at 35–36 (consideration of tentative recommendation to amend the definition of *limited common property*).

356. *Supra* note 5, s 257 (a).

357. See *ibid*, s 74.

358. See *ibid*, s 74 (2).

359. See *ibid*, s 74 (4). See, above, at 73–74 (consideration of tentative recommendation regarding sketch plans in these cases).

360. See *supra* note 5, s 75 (1).

the plan's filing but before the first annual general meeting of the strata corporation to designate parking stalls as limited common property.³⁶¹

Adding to, consolidating, or dividing a strata lot

The act has an intricate procedure that applies to strata-plan amendments for adding to a strata lot, consolidating two or more strata lots, or dividing a strata lot to create one or more smaller strata lots. The place to start in considering this procedure is the list of common elements noted earlier in this chapter.³⁶²

Amending the strata plan to add to, consolidate, or divide a strata lot requires the unanimous vote of strata-lot owners.³⁶³ But unlike the other procedures discussed in this chapter, this procedure also contains a list of situations that are exceptions to the requirement for a unanimous resolution.

- First, *to divide a residential strata lot into two or more strata lots*, an “amendment to the strata plan . . . must be approved by a resolution passed by a 3/4 vote at an annual or special general meeting.”³⁶⁴
- Second, *to divide other kinds of strata lots*, an “amendment to the strata plan . . . does not require any strata corporation approval if
 - “the combined unit entitlement of the 2 or more strata lots being created is the same as or less than the unit entitlement of the strata lot being divided,
 - “the total number of votes of the 2 or more strata lots being created is the same as or less than the number of votes of the strata lot being divided, and
 - “the amendment will not increase the share of the common expenses borne by a strata lot, other than the strata lot being divided.”³⁶⁵
- Third, *to consolidate strata lots*, an “amendment to the strata plan . . . does not require any strata corporation approval if

361. See *ibid*, s 258. See, above, at 45–51 (consideration of parking stalls and tentative recommendations regarding section 258).

362. See, above, at 86–87.

363. See *supra* note 5, s 259 (3) (“a resolution approving the amendment must be passed by a unanimous vote at an annual or special general meeting”).

364. *Ibid*, s. 260 (4).

365. *Ibid.*, s 260 (1). This rule is expressly made subject to the rule for residential strata lots in s 260 (4).

- “the unit entitlement of the consolidated strata lot is the same as or less than the combined unit entitlement of the 2 or more strata lots being consolidated,
- “the total number of votes of the consolidated strata lot is the same as or less than the number of votes of the 2 or more strata lots being consolidated, and
- “the amendment will not increase the share of the common expenses borne by a strata lot, other than the strata lots being consolidated.”³⁶⁶
- Fourth, *to add part of a strata lot to another strata lot*, an “amendment to the strata plan . . . does not require any strata corporation approval if
 - “the total unit entitlement of the 2 strata lots after the amendment is the same as or less than the total unit entitlement of the strata lots before the amendment,
 - “the total number of votes of the 2 strata lots after the amendment is the same as or less than the total number of votes of the strata lots before the amendment, and
 - “the amendment will not increase the share of the common expenses borne by a strata lot, other than the strata lots being altered.”³⁶⁷

Local approvals³⁶⁸ and documentation relating to chargeholders’ priorities³⁶⁹ may be required depending on the circumstances.

Finally, this procedure has several overriding rules:

- [A] strata plan may not be amended to divide a strata lot if the amendment would result in a strata plan consisting of bare land strata lots and strata lots that are not bare land strata lots.³⁷⁰
- Strata lots may not be consolidated unless
 - they are owned by the same person, and

366. *Ibid*, s 260 (2).

367. *Ibid*, s 260 (3).

368. See *ibid*, s 259 (3) (b) (ii) (“if a strata lot is being divided, a certificate signed by an approving officer indicating that the proposed amendment complies with any applicable municipal or regional district bylaws, Nisga’a Government laws or treaty first nation laws”).

369. See *ibid*, s 259 (3) (b) (vi) (“any document required by the registrar to resolve the priority of interests of any holders of registered charges against the strata lots being altered”).

370. *Ibid*, s 259 (5).

- the holders of registered charges against the strata lots have dealt, to the satisfaction of the registrar, with the issue of the priority of their interests as they will apply to the consolidated strata lot.³⁷¹

Making land held by the strata corporation into a new strata lot

This provision applies to “[l]and that is held in the name of or on behalf of the strata corporation, but not shown on the strata plan.”³⁷² The provision sets out a procedure for adding such land to an existing strata lot or using it to create a new strata lot. But the strata plan may only be amended for these purposes if the land in question:

- shares a common boundary with land in the strata plan;
- is separated only by a highway, dike, stream or right of way from land in the strata plan, or
- is separated from the land in the strata plan, but the approving officer is satisfied that the amendment to the strata plan would result in a viable development of benefit to the community.³⁷³

Further, “[a] strata lot in another strata plan may not be added to a strata lot or used to create a new strata lot under this section.”³⁷⁴

Amending the strata plan under this provision requires a resolution passed by a unanimous vote at a general meeting *only* in the following circumstances:

- the amendment will change the unit entitlement of a strata lot,
- the amendment will decrease the relative voting power of a strata lot, other than the strata lot being added to or created, or
- the amendment will increase the share of common expenses borne by a strata lot, other than the strata lot being added to or created.³⁷⁵

If none of these circumstances is present, then the strata-plan amendment may be approved by a resolution passed by a 3/4 vote.³⁷⁶

371. *Ibid*, s 259 (1).

372. *Ibid*, s 262 (1).

373. *Ibid*, s. 262 (1) (a)–(c).

374. *Ibid*, s 262 (2).

375. *Ibid*, s 262 (3) (b) (i)–(iii).

376. See *ibid*, s 262 (3) (a).

An application to amend the strata plan under this procedure also requires the common procedural elements noted earlier.³⁷⁷ And it requires local approvals,³⁷⁸ a transfer,³⁷⁹ and documentation relating to chargeholders' priorities.³⁸⁰

Adding a strata lot to common property

This procedure allows for the addition of a strata lot (or part of a strata lot) to the strata's common property. This amendment to a strata plan may only be made if the strata lot at issue "is free of mortgages or any other charges that may result in a transfer of an estate or interest in the strata lot."³⁸¹

This amendment must be approved by a resolution passed by a unanimous vote.³⁸² The application also calls for the common procedural elements noted earlier,³⁸³ "a transfer of any land that is being added to the common property,"³⁸⁴ and "any document required by the registrar to ensure that the land being added to the common property is free of mortgages or charges [that may result in a transfer of an estate or interest in the strata lot]."³⁸⁵

Making common property into land held by the strata corporation

Amending a strata plan under this procedure requires "[a] subdivision of common property"³⁸⁶ under part 7 of the *Land Title Act*.³⁸⁷ Among the requirements set out in

377. See, above, at 86–87.

378. See *Strata Property Act*, *supra* note 5, s 262 (3) (c) (ii) ("a certificate signed by an approving officer indicating that the proposed amendment complies with any applicable municipal or regional district bylaws, Nisga'a Government laws or treaty first nation laws").

379. See *ibid*, s 262 (3) (c) (iv) ("a transfer of any land that is being added to the strata lot or made into a new strata lot").

380. See *ibid*, s 262 (3) (c) (vi) ("any document required by the registrar to resolve the priority of interests of any holders of registered charges against the strata lots being altered").

381. *Ibid*, s 263 (1).

382. See *ibid*, s 263 (2) (a).

383. See, above, at 86–87.

384. *Supra* note 5, s 263 (2) (b) (v).

385. *Ibid*, s 263 (2) (b) (vi).

386. *Ibid*, s 265 (1).

387. *Supra* note 19, ss 58–120.

the *Land Title Act* is a requirement to obtain the unanimous consent of the owners of the land to the subdivision.³⁸⁸

Adding land held by the strata corporation to the common property

This procedure for amending a strata plan applies to “[l]and that is held in the name of or on behalf of the strata corporation, but not shown on the strata plan.”³⁸⁹ Such land may be added to a strata’s common property so long as:

- it shares a common boundary with land in the strata plan;
- it is separated only by a highway, dike, stream or right of way from land in the strata plan; [or]
- it is separated from the land in the strata plan, but the approving officer is satisfied that the amendment to the strata plan would result in a viable development of benefit to the community.³⁹⁰

Two other conditions apply to this procedure:

- the land in question “may not be added to the common property unless it is free of mortgages and other charges referred to in section 263 (1)”³⁹¹—that is, it’s free of mortgages or other charges that “may result in a transfer of an estate or interest” in the land;³⁹² and
- “[a] strata lot in another strata plan may not be added to the common property” by way of this procedure.³⁹³

Unlike the other procedures described in this chapter, this procedure does not require approval by a resolution passed by a unanimous vote. In all cases, a resolution passed by a 3/4 vote is sufficient to authorize this amendment to the strata plan.³⁹⁴

388. See *ibid*, s 97 (1) (“A subdivision plan must be signed by each owner of the land subdivided.”).

389. *Strata Property Act*, *supra* note 5, s. 266 (1).

390. *Ibid*, s 266 (1) (a)–(c).

391. *Ibid*, s 266 (1).

392. *Ibid*, s 263 (1) (“A strata lot or part of a strata lot may not be added to common property unless it is free of mortgages or any other charges that may result in a transfer of an estate or interest in the strata lot.”).

393. *Ibid*, s 266 (2).

394. See *ibid*, s 266 (3) (a).

The other requirements for an application under this procedure are the common procedural elements noted earlier,³⁹⁵ “any document required by the registrar to resolve the priority of interests of any holders of registered charges against the land held in the name of or on behalf of the strata corporation,”³⁹⁶ and “any document required by the registrar to ensure that the land being added to the common property is free of mortgages or charges [that may result in a transfer of an estate or interest in the land held by the strata corporation].”³⁹⁷

Should the Strata Property Act continue to require a resolution passed by a unanimous vote to authorize amending a strata plan to designate limited common property?

Brief description of the issue

When limited common property is designated by an amendment to the strata plan, one of the requirements is that the designation be approved by a resolution passed by a unanimous vote.³⁹⁸ This sets the highest voting threshold for the strata corporation to clear. Should the threshold be lowered to an 80-percent vote?

Discussion of options for reform

A lower voting threshold gives a strata more flexibility to designate limited common property. This added flexibility would be consistent with the one of the stated goals of the *Strata Property Act*'s approach to amending a strata plan.³⁹⁹

A threshold set at a level lower than unanimity also reduces the prospect of the vast majority of the strata corporation finding its will thwarted by the opposing views of a small minority. This can set up the kinds of conflicts that the committee examined in relation to terminating a strata.⁴⁰⁰ The composition and direction of the strata corporation can be dictated by an intransigent minority, over the wishes of the majority group. The unanimity requirement can even hamper a strata corporation's

395. See, above, at 86–87.

396. *Supra* note 5, s. 266 (3) (b) (iii).

397. *Ibid*, s 266 (3) (b) (iv).

398. See *ibid*, s 257 (a).

399. See, above, at 85–86.

400. See *Report on Terminating a Strata*, *supra* note 9 at 53–55.

ability to act in cases in which the composition of common property has come to differ from its depiction in the strata plan.⁴⁰¹

Finally, lowering the voting threshold would bring this corner of the *Strata Property Act* into alignment with recent changes to the act's termination provisions.⁴⁰²

But there are a number of factors that might serve to distinguish this topic from terminating a strata. Unlike the case for terminating a strata, designating limited common property may be done by other means than amending the strata plan.⁴⁰³ Relying on this alternative procedure avoids the requirement to obtain a resolution passed by a unanimous vote.⁴⁰⁴

Another consideration to bear in mind is that designating limited common property and terminating a strata may not be perceived as analogous situations. The two transactions deliver starkly different results, so there might be a solid rationale for them having different voting thresholds.

The committee's recommendation for reform

The committee favoured lowering the voting threshold required for a resolution to authorize amending a strata plan to designate limited common property. In its view, this change to the voting threshold would lend some needed flexibility to this procedure. It would help to ensure that the procedure could be used when the vast majority of the strata corporation favours its use.

The committee understands that this method of designating limited common property isn't used often in practice. A number of factors, in addition to the high voting threshold, account for the procedure's lack of popularity. The cost of the procedure often makes it an undesirable route for strata corporations to choose. But, that said,

401. See *Re Owners of Strata Plan NW2212*, 2010 BCSC 519 (application by strata corporation for relief of significantly unfair action—strata made up of townhouses with yards—belatedly discovered that developer installed fences that did not correspond to boundaries on strata plan—majority seeking amendment to strata plan, but three owners not in favour—rather than holding vote, strata corporation applying to court for relief—court dismissing application). See also *Strata Property Regulation*, *supra* note 6, s 14.12 (power for registrar of land titles to correct errors in strata plan).

402. See *supra* note 5, ss 272 (1), 277 (1).

403. See *ibid*, s 74.

404. See *ibid*, s 74 (1) ("Common property may be designated as limited common property by a resolution passed by a 3/4 vote at an annual or special general meeting.").

lowering the voting threshold should be an incremental improvement to the legislation by removing one roadblock to using this procedure in appropriate cases.

The vast majority of responses in the consultation agreed with the committee's proposed reform.

The committee recommends:

17. The Strata Property Act should require a resolution passed by an 80-percent vote to authorize amending a strata plan to designate limited common property.

Should the Strata Property Act continue to require a resolution passed by a unanimous vote to authorize amending a strata plan to remove a designation of limited common property?

Brief description of the issue

Amending a strata plan to remove a designation of limited common property also requires authorization by a resolution passed by a unanimous vote.⁴⁰⁵ In view of the recommendation to lower the voting threshold required to authorize amending the strata plan to designate limited common property, should the voting threshold required to authorize amending the strata plan to remove a designation of limited common property also be lowered?

Discussion of options for reform

The options for this issue are similar to those discussed for the previous issue. Lowering the voting threshold will make the legislation more flexible and will ensure that this procedure may be used when the vast majority supports its use. It can guard against the will of that majority being thwarted by a very small number of strata-lot owners. In addition, lowering the voting threshold in this case will harmonize this procedure with the allied procedure for designating limited common property.

That said, there may be reasons to treat removing a designation differently from creating the designation in the first place. The designation of limited common property often benefits a single strata lot. In many cases, that strata lot's owner bears

405. See *ibid*, s 257 ("To amend a strata plan to designate limited common property, or to amend a strata plan to remove a designation of limited common property made by the owner developer at the time the strata plan was deposited or by amendment of the strata plan, the strata plan must be amended as follows: (a) a resolution approving the amendment must be passed by a unanimous vote at an annual or special general meeting" [emphasis added]).

much of the cost of amending the strata plan. Making the designation vulnerable to being removed without that owner's consent would create uncertainty about the durability of using this procedure to designate limited common property.

The committee's recommendation for reform

The committee wrestled with this issue. It acknowledged that proposing two different voting thresholds where previously only one existed would make the legislation more complex. It could also be seen by some as creating a puzzling inconsistency. But, in the committee's view, these procedures respond to two different factual situations. So, at bottom, there is no contradiction in outfitting them with different voting thresholds.

In the committee's view, lowering the voting threshold for amending a strata plan to remove a designation of limited common property would open the door to abuses of the procedure. So the committee proposes retaining the current threshold.

A solid majority of consultation respondents agreed with the committee's proposal on this issue.

The committee recommends:

18. The Strata Property Act should continue to require a resolution passed by a unanimous vote to authorize amending a strata plan to remove a designation of limited common property.

Should the Strata Property Act Continue to Require a Resolution Passed by a Unanimous Vote to Authorize Amending a Strata Plan to Add to, Consolidate, or Divide a Strata Lot?

Brief description of the issue

A strata corporation generally must be authorized by a resolution passed by a unanimous vote in order to amend the strata plan to add to, consolidate, or divide a strata lot.⁴⁰⁶ (This general requirement is subject to a list of exceptions.)⁴⁰⁷ Should the voting threshold be lowered for this procedure?

406. See *ibid*, s 259 (3) (a).

407. See *ibid*, s 260 (“(1) Subject to subsection (4), an amendment to the strata plan to divide a strata lot into 2 or more strata lots does not require any strata corporation approval if (a) the combined unit entitlement of the 2 or more strata lots being created is the same as or less than the unit entitlement of the strata lot being divided, (b) the total number of votes of the 2 or more strata lots being created is the same as or less than the number of votes of the strata lot being

Discussion of options for reform

The pros and cons of this proposed reform are similar to those considered in the previous two issues. Lowering the voting threshold for a resolution authorizing adding to, consolidating, or dividing a strata lot would build greater flexibility into the act. It would also increase the likelihood that a large majority of strata-lot owners would get their way on amending a strata plan in this fashion.

But it's important to note that this procedure for amending a strata plan includes an extensive set of exemptions from the requirement to authorize the amendment by passing a resolution by a unanimous vote. As a result of these exemptions, in many cases the strata-plan amendment can be authorized by a resolution passed by a 3/4 vote or without any approval by the strata corporation at all. These exemptions may shift the main question to whether this procedure for amending a strata plan requires any greater flexibility than what the exceptions already build into the legislation.

The committee's recommendation for reform

While the committee considered lowering the voting threshold for this procedure for the sake of consistency, it decided against making that recommendation. The committee noted that this procedure is little-used in practice. When it does tend to be used, one of the exceptions is likely to apply. In the committee's view, the existing exceptions undercut the need to amend the legislation.

Consultation respondents supported the committee's proposal on this issue, by a strong majority.

divided, and (c) the amendment will not increase the share of the common expenses borne by a strata lot, other than the strata lot being divided. (2) An amendment to the strata plan to consolidate 2 or more strata lots does not require any strata corporation approval if (a) the unit entitlement of the consolidated strata lot is the same as or less than the combined unit entitlement of the 2 or more strata lots being consolidated, (b) the total number of votes of the consolidated strata lot is the same as or less than the number of votes of the 2 or more strata lots being consolidated, and (c) the amendment will not increase the share of the common expenses borne by a strata lot, other than the strata lots being consolidated. (3) An amendment to the strata plan to add part of a strata lot to another strata lot does not require any strata corporation approval if (a) the total unit entitlement of the 2 strata lots after the amendment is the same as or less than the total unit entitlement of the strata lots before the amendment, (b) the total number of votes of the 2 strata lots after the amendment is the same as or less than the total number of votes of the strata lots before the amendment, and (c) the amendment will not increase the share of the common expenses borne by a strata lot, other than the strata lots being altered. (4) An amendment to the strata plan to divide a residential strata lot into 2 or more strata lots must be approved by a resolution passed by a 3/4 vote at an annual or special general meeting.”).

The committee recommends:

19. The Strata Property Act should continue, in those cases not covered by an exemption, to require a resolution passed by a unanimous vote to authorize amending a strata plan to add to, consolidate, or divide a strata lot.

Should the Strata Property Act Continue to Require a Resolution Passed by a Unanimous Vote to Authorize Amending a Strata Plan to Add a Strata Lot to Common Property?

Brief description of the issue

Amending a strata plan to add a strata lot to the common property requires authorization by a resolution passed by a unanimous vote.⁴⁰⁸ Unlike the procedure discussed in the previous issue for reform, the requirement in this procedure isn't subject to any exceptions. Should the voting threshold be lowered from a unanimous vote to an 80-percent vote?

Discussion of options for reform

Similar options and considerations arise for this issue as for the previous ones.

A lower voting threshold would give strata corporations more flexibility in making decisions about whether to add a strata lot to common property. A lower threshold would also make it more unlikely that the will of the majority could be blocked by a small, intransigent minority. Finally, changing the voting threshold would also create an opportunity to align this procedure with the new threshold for terminating a strata.⁴⁰⁹

The main advantage of the current requirement is that it provides enhanced protection for all strata-lot owners. Adding a strata lot to common property may affect the unit entitlement or voting rights of other strata lots. Changes to voting rights and unit entitlement may, in turn, affect a strata-lot owner's responsibility for strata expenses, ability to shape decision-making, and other matters concerning the strata property.

408. See *ibid*, s 263 (2) (a).

409. See *ibid*, ss 272 (1), 277 (1).

The committee's recommendation for reform

The committee favoured lowering the voting threshold in this case. It would build some flexibility into the legislation and would make it consistent with recent changes to the legislation governing termination.

The committee's proposed reform commanded widespread support in the public consultation.

The committee recommends:

20. *The Strata Property Act should require a resolution passed by an 80-percent vote to authorize amending a strata plan to add a strata lot to common property.*

Issues for Reform—Schedules to the Strata Plan

Accompanying documents to the strata plan

The *Strata Property Act* sets out a list of documents that an owner-developer must deposit in the land title office along with the strata plan. These documents include the strata corporation's mailing address,⁴¹⁰ "any bylaws that differ in any respect from the Standard Bylaws,"⁴¹¹ and extra copies of the strata plan, in the amount the registrar of land titles requires.⁴¹² They also include up to two schedules:

- a Schedule of Unit Entitlement, which must be included in all cases;⁴¹³ and
- a Schedule of Voting Rights, which must be included "if voting rights are set out in a schedule"—that is, if voting rights in the strata corporation depart from the default statutory rule of one vote per strata lot.⁴¹⁴

410. See *ibid*, s 245 (c). See also *ibid*, s 62 (1) ("The strata corporation must ensure that the correct mailing address for the strata corporation is filed in the land title office.").

411. *Ibid*, s 245 (d).

412. See *ibid*, s 245 (e).

413. See *ibid*, s 245 (a). The Schedule of Unit Entitlement must be in the prescribed form. See *Strata Property Regulation*, *supra* note 6, Form V.

414. *Supra* note 5, s 245 (b). See also *ibid*, ss 53(1), 247, 248, 264 (the combined effect of these provisions limits departures from the default rule to cases in which a strata plan contains at least one nonresidential strata lot or in which a strata plan consisting entirely of residential strata lots has seen an amendment to its Schedule of Unit Entitlement). The Schedule of Voting Rights must be in the prescribed form. See *Strata Property Regulation*, *supra* note 6, Form W.

The two schedules are the focus of this part of this chapter. The prime focus of the issues that follow again concern whether a voting threshold may be lowered from a unanimous vote to an 80-percent vote. This voting threshold applies when a strata corporation is amending the Schedule of Unit Entitlement. It also applies when a strata corporation wants to change the basis of strata lots' contributions to paying for common expenses, either by way of strata fees or special levy.

Finally, this part looks at the complex provisions applying to filing a Schedule of Voting rights and recommends changes that connect with the committee's recommendations concerning amending a strata plan.

Amending the Schedule of Unit Entitlement

Amending a Schedule of Unit Entitlement is apparently “not uncommon” in practice.⁴¹⁵ The desire to do so tends to be a consequence of renovations and other practical changes to a strata property: “[t]ypical situations involve enclosing decks, converting crawlspaces and attics to living space, constructing lofts, and correcting apparent errors on the strata plan.”⁴¹⁶

The *Strata Property Act* doesn't contain a comprehensive mechanism that allows a strata to amend its Schedule of Unit Entitlement in all cases. Instead, its approach is similar to the way the act approaches amending a strata plan. There are a number of mechanisms, each rather limited in scope, that provide a means for a strata to amend its Schedule of Unit Entitlement. The focus of the issue for reform is on a consensual method, which allows a strata corporation to amend its Schedule of Unit Entitlement if all its eligible voters agree to do so. But it's worth noting that the committee reviewed each legislative method in full, to ensure that its recommendations would mesh with the full legislative scheme.

Amendment by resolution passed by a unanimous vote

The *Strata Property Act* allows a strata to amend its Schedule of Unit Entitlement by way of a unanimous vote, but this mechanism only applies in limited circumstances. It only applies to a strata property with a conventional strata plan, which has used habitable area as the basis for calculating the unit entitlement of residential strata lots.⁴¹⁷

415. *British Columbia Strata Property Practice Manual*, *supra* note 2 at § 3.41.

416. *Ibid.*

417. See *supra* note 5, s. 261 (1) (allowing amendment “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

Two sections of the act are relevant to this mechanism. The first is section 70, which deals with changes to a strata lot. This section imposes a requirement to amend the Schedule of Unit Entitlement if, as a result of physical changes to a strata lot, its habitable area is increased or decreased.⁴¹⁸

Section 261 sets out the detailed procedure for amending the Schedule of Unit Entitlement. This procedure calls for a resolution of the strata corporation passed by a unanimous vote, the approval of the superintendent of real estate, and an application to a registrar of land titles.⁴¹⁹

The registrar is required, “if satisfied that the application and accompanying documents to amend the Schedule of Unit Entitlement comply with the requirements of this Act and the regulations,” to “file” the amended schedule.⁴²⁰

It bears underlining that this procedure to amend a Schedule of Unit Entitlement is far from comprehensive in scope. It doesn’t apply to a nonresidential strata lot. It also doesn’t apply to a residential strata lot, if the strata lot’s unit entitlement has been calculated by some means other than habitable area (such as a whole number that is the same for all residential strata lots).⁴²¹ Finally, the regulations provide an exemp-

on the basis of habitable area in accordance with section 246 (3) (a) (i) or on the basis of square footage in accordance with section 1 of the *Condominium Act*”).

418. See *ibid*, s 70 (4) (“Subject to the regulations, if an owner wishes to increase or decrease the habitable part of the area of a residential strata lot, by making a nonhabitable part of the strata lot habitable or by making a habitable part of the strata lot nonhabitable, and the unit entitlement of the strata lot is calculated on the basis of habitable area in accordance with section 246 (3) (a) (i) or on the basis of square footage in accordance with section 1 of the *Condominium Act*, R.S.B.C. 1996, c. 64, the owner must (a) seek an amendment to the Schedule of Unit Entitlement under section 261, and (b) obtain the unanimous vote referred to in section 261 before making the change.”). The regulations allow an owner who wishes to decrease the habitable area of a strata lot without changing its unit entitlement to avoid compliance with section 70 (4). See *supra* note 6, s 5.1 (1) (“An owner who wishes to decrease the habitable part of the area of a residential strata lot without amending the Schedule of Unit Entitlement need not comply with the requirements set out in section 70 (4) of the Act.”). See also *Barrett*, *supra* note 89; *Hassan v The Owners, Strata Plan LMS 2854*, 2018 BCCRT 303.

419. See *supra* note 5, s 261 (1).

420. *Ibid*, s 261 (2).

421. See *British Columbia Strata Property Practice Manual*, *supra* note 2 at § 3.43 (speculating that “s. 261 is [also] not available where an existing strata corporation wishes to change its unit entitlement to the same number for each strata lot”).

tion for changes that would result in a minor amendment of the Schedule of Unit Entitlement.⁴²²

Amendment as a consequence of a strata-plan amendment

The act also contains a procedure for amending a strata property's Schedule of Unit Entitlement as a consequence of an amendment to the strata plan.⁴²³ This procedure applies to the following changes to a strata plan:

- amending a strata plan to add to, consolidate, or divide a strata lot;⁴²⁴
- amending a strata plan to make land held by a strata corporation into a new strata lot;⁴²⁵ and
- amending a strata plan to add a strata lot to common property.⁴²⁶

This provision can't be used to change the formula used to calculate unit entitlement. An amended Schedule of Unit Entitlement under this provision must use "the same formula for calculations that was used to establish the Schedule of Unit Entitlement that is being replaced."⁴²⁷ The provision's rationale is to bring the schedule into line with the changes brought about by the strata-plan amendment.

Amendment by application to supreme court

The *Strata Property Act* has a dedicated provision allowing an application to court for an order to amend a strata property's Schedule of Unit Entitlement.⁴²⁸ The purpose of this provision is to allow the strata corporation to correct a discrepancy between the unit entitlement of a strata lot and the actual habitable area of the strata

422. See *supra* note 6, s 5.1 (2) ("An owner who wishes to increase the habitable part of the area of a residential strata lot without amending the Schedule of Unit Entitlement need not comply with the requirements set out in section 70 (4) of the Act if (a) the increase to the habitable part, combined with any previous increase to the habitable part, is less than 10% of the habitable part and less than 20 square metres, and (b) the owner obtains the prior written approval of the strata corporation.").

423. See *supra* note 5, s 264 (1).

424. See *ibid*, s 259.

425. See *ibid*, s 262.

426. See *ibid*, s 263.

427. *Ibid*, s 264 (1).

428. See *ibid*, s 246 (7)–(8).

lot. One judge has called it a “recalculation remedy.”⁴²⁹ But, like the previously discussed procedures, this provision is only available in limited circumstances.

The provision allows “an owner or the strata corporation” to apply to the supreme court for an order to amend the strata property’s Schedule of Unit Entitlement.⁴³⁰ On the provision’s face, it contains the following limitations:

- the provision only applies to “a residential strata lot”;⁴³¹
- the unit entitlement must be “calculated on the basis of habitable area . . . or on the basis of square footage in accordance with section 1 of the *Condominium Act*”;⁴³² and
- “the actual habitable area or square footage is not accurately reflected in the unit entitlement of the strata lot as shown on the Schedule of Unit Entitlement.”⁴³³

More limitations are found in the regulations. First, a court application under this procedure is not available if the strata corporation wants to amend what may be called its original Schedule of Unit Entitlement—that is, the schedule that was deposited in the land title office at the time the strata property was created.⁴³⁴ Second, there is a kind of materiality test applied to court applications involving the amended schedule. The unit-entitlement figure that is the subject of the application must vary from the actual habitable area of the strata lot by at least 10 percent or by 20 square metres (or both).⁴³⁵

429. *Kranz v The Owners, Strata Plan VR 29*, 2004 BCCA 108 at para 7 [*Kranz*], Finch CJ.

430. *Supra* note 5, s 246 (7).

431. *Ibid*, s 246 (7) (a).

432. *Ibid*, s 246 (7) (a).

433. *Ibid*, s 246 (7) (b).

434. See *supra* note 6, s 14.13 (“An application must not, after November 24, 2009, be brought under section 246 (7) of the Act in respect of a strata lot (a) if the inaccuracy referred to in section 246 (7) (b) of the Act was contained in the Schedule of Unit Entitlement at the time of the deposit of the strata plan in a land title office.”). See also *Barrett, supra* note 89.

435. See *ibid*, s 14.13 (b) (application must not be brought “unless one or both of the following conditions apply: (i) the actual habitable area or square footage of the strata lot is at least 10% greater than, or at least 10% less than, the habitable area or square footage used to determine the unit entitlement of the strata lot; (ii) the actual habitable area or square footage of the strata lot is at least 20 square metres greater than, or at least 20 square metres less than, the habitable area or square footage used to determine the unit entitlement of the strata lot”). See also *Kranz, supra* note 429 at para 14 (holding that chambers judge “was correct in holding that the petitioner had

Under this provision of the act, “the court has no discretion to modify a Schedule of Unit Entitlement as the court thinks fit to allocate a fair portion of common expenses among owners of strata lots.”⁴³⁶ The court’s role is constrained to choose between accepting the amendment to the schedule or rejecting it.⁴³⁷

Correction of errors in a registered strata plan

The regulations contain a provision that allows a registrar to correct errors in a “registered strata plan.”⁴³⁸ This term is defined expansively; it includes a Schedule of Unit Entitlement.⁴³⁹ *Error* is also a defined term: it means “any erroneous measurement or error, defect or omission in a registered strata plan.”⁴⁴⁰

“If it appears to the registrar that there is an error in any registered strata plan,” then the registrar may, after giving notice to interested parties and hearing their submission, decide to “correct the error.”⁴⁴¹

Significant unfairness

A second possible means for amending a Schedule of Unit Entitlement—or achieving a result that is the equivalent to an amendment—is by way of an application to the supreme court for an order under the court’s power to prevent or remedy unfair acts.⁴⁴² A number of litigants have argued that a strata property’s Schedule of Unit Entitlement is significantly unfair and that the court has the power under this section to remedy the perceived unfairness.⁴⁴³ In most instances, these applications

not established the ‘threshold test’ of a 10% differential between the actual habitable area, and the area used to calculate the unit entitlement of Lot A”).

436. Mangan, *supra* note 4 at 188.

437. *Ibid.* See also *Fenwick v Parks*, 2004 BCSC 1132 at para 57, Burnyeat J (court ordering amendments to Schedule of Unit Entitlement under this procedure).

438. See *supra* note 6, s 14.12.

439. See *ibid*, s 14.12 (1) “registered strata plan” (“includes any document, deposited in the land title office, that (a) is referred to in section 245 (a) or (b) of the Act, (b) forms part of a strata plan under the *Condominium Act*, R.S.B.C. 1996, c. 64 or a former Act, or (c) amends or replaces a document referred to in paragraph (a) or (b)”). Section 245 lists the documents that accompany a strata plan, one of which is a Schedule of Unit Entitlement. See *supra* note 5, s 245 (a).

440. *Supra* note 6, s 14.12 (1) “error.”

441. *Ibid*, s 14.12 (2).

442. See *Strata Property Act*, *supra* note 5, s 164.

443. See *Liverant v The Owners, Strata Plan VIS-5996*, 2010 BCSC 286 [*Liverant*]; *Peace v The Owners, Strata Plan VIS165*, 2009 BCSC 1791 [*Peace*]; *Strata Plan VR1767 (Owners) v Seven Estate Ltd*,

have been unsuccessful.⁴⁴⁴ But in one case, the court granted an applicant a remedy.⁴⁴⁵

Commentary on this case has been mixed. One commentator has essentially characterized the case as a dead end, noting that, in the absence of specific machinery in the act to provide for amendment of a Schedule of Unit Entitlement due to its unfairness, the schedule can't practically be amended.⁴⁴⁶ So the court's order in this case ends up "compromis[ing] the integrity of the register of land titles, by overriding the registered strata plan and schedules without amending them."⁴⁴⁷ But another commentator has said that, in granting a remedy, the court has "effectively created a fourth method for changing unit entitlement."⁴⁴⁸

Land Title Act

One commentator has speculated that the *Land Title Act*⁴⁴⁹ gives a registrar of land titles the scope to amend a Schedule of Unit Entitlement, by virtue of the registrar's power to correct errors, defects, and omissions,⁴⁵⁰ which can "[a]rguably" be ex-

2002 BCSC 381 [*Seven Estate*]. See also *Luck v The Owners, Strata Plan NW 1370*, 2019 BCCRT 359 at paras 33–34 ("I find that the inequitable division of strata-related expenses and contributions and the applicant's requested remedy of compensation are closely linked to the unit entitlement issue, over which I have no jurisdiction. Section 11(1)(c) of the [*Civil Resolution Tribunal Act*] provides that the tribunal may refuse to resolve a claim or dispute within its jurisdiction if the issues in the claim or dispute are too complex for the dispute resolution process or otherwise impractical for the tribunal to resolve. Given that the amendment of the schedule of unit entitlement can be dealt with only by the British Columbia Supreme Court, I find that it would be impractical for me to consider the significant unfairness issue in isolation. This is particularly so given the potential for significant unfairness to other strata lot owners if I were to address the applicant's requested remedy for compensation.").

444. See *Liverant*, *supra* note 443 at para 23, Smith J ("Although the court has broad jurisdiction under s. 164, I am not satisfied that jurisdiction extends to changing the unit entitlement."); *Peace*, *supra* note 443 at paras 48–60, Sewell J.

445. See *Seven Estate*, *supra* note 443 at para 58, Martinson J.

446. See *British Columbia Strata Property Practice Manual*, *supra* note 2 at § 2.41 ("Regardless, the registered strata plan and Schedule of Unit Entitlement have not been amended, and cannot be amended in the absence of a *Strata Property Act* provision expressly permitting an amendment.").

447. *Ibid.*

448. Mangan, *supra* note 4 at 192.

449. *Supra* note 19.

450. *Ibid.*, s 106 (1) ("If it appears to the registrar, on the filing of satisfactory evidence, including a plan or other instrument the registrar may require, that there is an error, defect or omission in a deposited plan, the registrar may correct the plan.").

tended “to correct a strata plan in an appropriate case.”⁴⁵¹ But the commentator also throws some cold water on this idea, noting that “the Registrar’s power to correct an error exists only where the error may be corrected without prejudicing rights acquired in good faith and for value.”⁴⁵² This qualification means that, even if the registrar’s power exists under the *Land Title Act*, “in many cases the Registrar will not be able to change the schedule if the correction could adversely affect the rights of other owners who purchased their strata lots without any knowledge of the alleged error.”⁴⁵³

Changing the basis of contribution to shared expenses

Section 99 sets out the general rule for calculating strata fees. The provision establishes the following formula, which uses unit entitlement as its basis, for “a strata lot’s share of the contribution to the operating fund and contingency reserve fund”:

$$\frac{\text{unit entitlement of strata lot}}{\text{total unit entitlement of all strata lots}} \times \text{total contribution.}^{454}$$

The regulations contain special rules, setting out formulas that apply to sharing expenses related to limited common property,⁴⁵⁵ to a strata corporation with types of strata lots,⁴⁵⁶ and to a strata corporation that has taken responsibility for the repair

451. Mangan, *supra* note 4 at 191.

452. *Ibid.* See also *Land Title Act*, *supra* note 19, s 383 (1) (“If it appears to the registrar that (a) an instrument has been issued in error or contains a misdescription, or (b) an endorsement has been made or omitted in error on a register or instrument, whether the instrument is in the registrar’s custody or has been produced to the registrar under summons, the registrar may, so far as practicable, without prejudicing rights acquired in good faith and for value, (c) cancel the registration, instrument or endorsement, or (d) correct the error in or supply the entry omitted on the register or instrument or an endorsement made on it, or in a copy of an instrument made in or issued from the land title office.”).

453. Mangan, *supra* note 4 at 191.

454. *Supra* note 5, s 99 (2). If the strata has sections, then an equivalent formula is used for sharing expenses within the section. See *ibid*, s 195 (1). See also *ibid*, s 166 (2) (“A strata lot’s share of a judgment against the strata corporation is calculated in accordance with section 99 (2) or 100 (1) as if the amount of the judgment were a contribution to the operating fund and contingency reserve fund, and an owner’s liability is limited to that proportionate share of the judgment.”).

455. See *supra* note 6, s 6.4 (1).

456. See *ibid*, s 6.4 (2).

and maintenance of specified portions of some but not all of the strata lots.⁴⁵⁷ These special rules were considered earlier in this project.⁴⁵⁸

The act also allows strata corporations to override the general rule, by adopting their own formula for sharing contributions to expenses. The sections that follow examine the act's provisions for contributions to the operating and the contingency reserve funds and for special levies.

Change to basis for calculation of contribution to operating fund and contingency reserve fund

A strata corporation is allowed to change the basis for calculating contributions to its operating fund and contingency reserve fund. To make such a change it must, “[a]t an annual or special general meeting held after the first annual general meeting,” adopt a “a resolution passed by a unanimous vote” setting out the strata’s agreement to use a formula different than the one established by the general rule.⁴⁵⁹

A strata corporation is not limited to adopting a single replacement formula under this provision. The legislation expressly allows the use of “one or more different formulas.”⁴⁶⁰

A resolution passed under this provision only takes effect upon its filing in the land title office, along with “a Certificate of Strata Corporation in the prescribed form stating that the resolution has been passed by a unanimous vote.”⁴⁶¹ A strata corporation may revoke or change the resolution by passing another resolution, giving effect to the revocation or change, by a unanimous vote and filing that resolution and a certificate in the land title office.⁴⁶²

Change to basis for calculation of contribution to special levy

The general rule also applies when a strata corporation raises funds by means of a special levy.⁴⁶³ But a strata corporation may choose to override the general rule.

457. See *ibid*, s 6.5 (1).

458. See *Report on Complex Stratas*, *supra* note 12.

459. *Supra* note 5, s 100 (1).

460. *Ibid*, s 100 (1).

461. *Ibid*, s 100 (3).

462. *Ibid*, s 100 (2)–(3).

463. See *ibid*, s 108 (1) (enabling strata to “raise money from the owners by means of a special levy”).

The act sets out two options for calculating a contribution to a special levy.

- The calculation may be in accordance with the formula used for contributions to the operating fund and the contingency reserve fund. This formula may be the general rule, which is based on unit entitlement, or a variation of that rule, which has previously been adopted by a resolution passed by a unanimous vote and filed in the land title office. In this case, the special levy must be approved by a resolution passed by a 3/4 vote.⁴⁶⁴
- The calculation may instead be based on “another way that establishes a fair division of expenses for that particular levy.” In this case, the special levy must be approved by a resolution passed by a unanimous vote.⁴⁶⁵

Should the Strata Property Act continue to require a resolution passed by a unanimous vote 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?

Brief description of the issue

Section 70 (4) of the *Strata Property Act* sets out when an owner may “increase or decrease the habitable part of the area of a residential strata lot.”⁴⁶⁶ When a change to a strata lot occurs under this section, the act establishes a procedure for amending the Schedule of Unit Entitlement, which applies to cases in which the amendment is needed “to reflect a change in the habitable area of a residential strata lot.”⁴⁶⁷ In

464. See *ibid*, s 108 (2) (a). The provision also addresses calculating a strata lot’s share of the contribution in cases in which the strata has sections.

465. *Ibid*, s 108 (2) (b).

466. *Ibid*, s 70 (4) (“Subject to the regulations, if an owner wishes to increase or decrease the habitable part of the area of a residential strata lot, by making a nonhabitable part of the strata lot habitable or by making a habitable part of the strata lot nonhabitable, and the unit entitlement of the strata lot is calculated on the basis of habitable area in accordance with section 246 (3) (a) (i) or on the basis of square footage in accordance with section 1 of the *Condominium Act*, R.S.B.C. 1996, c. 64, the owner must (a) seek an amendment to the Schedule of Unit Entitlement under section 261, and (b) obtain the unanimous vote referred to in section 261 before making the change.”).

467. *Ibid*, s 261 (1).

these cases, one of the procedure's requirements is that "a resolution approving the amendment must be passed by a unanimous vote at an annual or special general meeting."⁴⁶⁸

Should the voting threshold for authorizing use of this procedure be lowered to an 80-percent vote?

Discussion of options for reform

As in the previous issues discussed in this chapter, the options for this issue boil down to changing the act to provide a new voting threshold or retaining the status quo.

Making such a change would make it incrementally simpler to amend a Schedule of Unit Entitlement under this procedure. It would limit the possibility that a single in-transigent voter (or even an indifferent voter who is hard to reach) could derail plans to improve a strata lot or require a court application to obtain approval of such plans.⁴⁶⁹ Another advantage of reforming this provision is that it could be brought into line with similar committee proposals for terminating a strata and for certain procedures to amend a strata plan. This would promote a level of consistency across the act.

On the other hand, an argument could be made that since changing a Schedule of Unit Entitlement affects the rights and liabilities of all strata-lot owners, a unanimous vote approving any changes should be required. As unit entitlement reflects important aspects of the property interests of strata lot owners, it could be argued that a Schedule of Unit Entitlement should not be changed without a unanimous vote. Another point that may weigh in favour of the status quo is that there are no groups calling for its reform.

The committee's recommendation for reform

In the committee's view, this procedure would benefit from a lower voting threshold. It would add some flexibility to the procedure. Making this change would also promote a level of consistency with other procedures (such as termination) that have moved to this voting threshold.

This proposal attracted the support of a solid majority of consultation respondents.

468. *Ibid*, s 261 (1) (a).

469. See *Strata Property Act*, *ibid*, s 52 (allowing court to "make an order providing that the vote proceed as if the dissenting voter or voters had no vote" in specified circumstances).

The committee recommends:

21. The Strata Property Act should require a resolution passed by an 80-percent vote 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.

Should the Strata Property Act continue to require a resolution passed by a unanimous vote to authorize changing the basis on which a strata lot's share of the contribution to the strata's operating fund and contingency reserve fund is calculated?

Brief description of the issue

The general rule for strata corporations is to calculate a strata lot's share of the contribution to a strata's operating fund and its contingency reserve fund on the basis of the strata lot's unit entitlement. The act allows for some flexibility within this system: through devices such as sections and types strata corporations can use unit entitlement as the basis for calculating contributions and also attempt to allocate expenses in ways that vary somewhat from a strict accounting according to unit entitlement.

The act also allows strata corporations to make the calculations on some basis other than unit entitlement. But a strata corporation needs a resolution passed by a unanimous vote to depart from the unit-entitlement system. Should this voting threshold be lowered to an 80-percent vote?

Discussion of options for reform

Lowering the voting threshold would give strata corporations an increased measure of flexibility in dealing with expense sharing. This flexibility could be especially welcome for addressing expense-sharing concerns. While British Columbia's strata-property sector is one of the most diverse and sophisticated in the country, its legislative approach to expense sharing is considered to be more rigid than the approach typically taken in other Canadian jurisdictions.⁴⁷⁰ Even though British Columbia's

470. See K. C. Woodsworth, ed, *Condominiums: Being the edited transcript of a lecture course in Continuing Legal Education held at Vancouver in November, 1971* (Vancouver: Centre for Continuing Legal Education, University of British Columbia, 1971) at 20 ("We have disadvantages in our system [in British Columbia]. It creates a rigid and somewhat inflexible type of condominium. The declaration that I've been speaking of filed in other jurisdictions allows for greater elasticity of chopping and changing later on.").

legislation contains features such as sections and types that aren't typically found in other Canadian statutes, these features only go so far. They only apply in certain circumstances and, when they do apply, only provide a modified version of expense sharing by application of formulas based on unit entitlement. Changing the basis of these formulas still requires a resolution passed by a unanimous vote, which is a very high hurdle to clear. This can leave many strata corporations frustrated and unable to pursue their favoured approach to expense sharing because it is blocked by a small minority of strata-lot owners.

Lowering the voting threshold would also bring consistency between this part of the act and the recent changes to the legislation governing termination. It could be argued that it would be anomalous to allow termination after an 80-percent vote but to insist on a unanimous vote to change the basis of contributions to the operating fund and the contingency reserve fund.

The potential downside with lowering the voting threshold is that it could open the door to ongoing abuse of some strata-lot owners. A greater burden of the strata corporation's expenses could be shifted on to certain owners. An owner in such a position wouldn't be bereft of defences, but such an owner would likely have to make a case that the strata corporation's actions were significantly unfair.⁴⁷¹ This would be much more difficult than the current system, which requires the owner's consent to any changes.

Another potential disadvantage is that lowering the voting threshold could create uncertainty in the system, short of outright abuses. The relatively standardized system of expense sharing that British Columbia's legislation creates has advantages for owners and strata-lot purchasers, particularly in the residential sector. Making it easier to depart from the standard could also make it harder for owners and purchasers to navigate this sector by introducing subtle differences between strata corporations.

The committee's recommendation for reform

The committee grappled extensively with this issue. It could see some advantages with building in greater flexibility with the legislation. It would also be desirable to have greater consistency between other fundamental changes and the new voting threshold for termination. But, ultimately, the committee decided to propose retaining the status quo. In the committee's view, lowering this voting threshold in this case would potentially open the door to abuses and uncertainty.

⁴⁷¹. See *Strata Property Act*, *supra* note 5, s 164.

A strong majority of consultation respondents supported the committee's proposal.

The committee recommends:

22. The Strata Property Act should continue to require a resolution passed by a unanimous vote to authorize agreeing to use one or more different formulas, other than the formulas set out in section 99 of the act and in the regulations, for the calculation of a strata lot's share of the contribution to the operating fund and contingency reserve fund.

Should the Strata Property Act continue to require a resolution passed by a unanimous vote to approve a special levy when each strata lot's share of the special levy is calculated in a way other than in accordance with sections 99, 100, or 195 of the act?

Brief description of the issue

Strata corporations are permitted to depart from the general rules in calculating a strata lot's share of a special levy so long as the formula that the strata is proposing to use "establishes a fair division of expenses for that particular levy" and the levy is approved by a resolution passed by a unanimous vote.⁴⁷² Should this voting threshold be lowered to an 80-percent vote?

Discussion of options for reform

The considerations for this issue for reform parallel those for the previous issue. The unanimous-vote requirement serves a mainly protective purpose. Although the act requires fairness in any departure from unit entitlement as a basis for calculating contributions to a special levy, the unanimous-vote requirement gives dissenting owners a practical means to protect their interests. There is some potential that this power to change the basis of calculating contributions to a special levy could be used in an abusive fashion. The unanimous-vote requirement makes it very difficult for an abusive majority to override the wishes of a minority group or owner.

Moving away from a unanimous-vote requirement may have some advantages for strata corporations. It would make it marginally easier for stratas to address any unusual circumstances that may accompany a need to pass a specific special levy. Adopting a voting threshold that matches the voting threshold for termination would help to promote some consistency among fundamental changes.

472. *Ibid*, s 108 (2) (b).

The committee's recommendation for reform

As was the case with the previous issue, the committee also grappled with this issue. There is some logic to lowering the voting threshold in this case. But the committee was again concerned about the potential for abuse. It also was concerned that a lower voting threshold could, in some cases, lead to the perverse outcome of delaying needed repairs and maintenance. This could be the result if small groups of owners, in some cases, attempt to make their vote for the resolution authorizing the repairs conditional on changing the basis upon which contributions to the special levy that would fund the repairs is calculated. While such an arrangement would be virtually impossible to implement under the current provisions, some owners may see a glimmer of hope in exacting such changes if the voting threshold were lowered to an 80-percent vote. Even if the gambit were ultimately unsuccessful, pursuing it could significantly delay needed repairs and maintenance.

Consultation respondents supported the committee's proposal, by a solid majority.

The committee recommends:

23. The Strata Property Act should continue to require a resolution passed by a unanimous vote to approve a special levy when each strata lot's share of the special levy is calculated in a way other than in accordance with sections 99, 100, or 195 of the act.

Should a Schedule of Voting Rights be required to accompany deposit of a strata plan containing at least one nonresidential strata lot?

Brief description of the issue

The *Strata Property Act* deals with the need to establish a Schedule of Voting Rights in two sections.⁴⁷³ The sections are both engaged “[i]f a strata plan has at least one nonresidential strata lot.” The prime distinction between the sections is that one applies to cases in which the proposed schedule doesn't require the approval of the superintendent of real estate⁴⁷⁴ and the other applies when the schedule is submitted to the superintendent for approval.⁴⁷⁵

473. See *ibid*, ss 247, 248.

474. See *ibid*, s 247.

475. See *ibid*, s 248.

Both sections contain permissive language (“may”) to describe the provision for depositing the schedule in the land title office along with the strata plan.⁴⁷⁶ Should the legislation be amended to make it mandatory to file a Schedule of Voting Rights in these cases?

Discussion of options for reform

While strictly speaking this issue doesn’t involve a fundamental change to a strata corporation, it grew out of the committee’s review of the legislation supporting fundamental changes. Even though the committee’s focus was on voting thresholds that call for a unanimous vote, part of its review was on the broader procedural requirements for implementing fundamental changes. This issue arose out of examination of the existing legislation.

The primary advantage of amending the legislation is to promote certainty in determining voting rights in strata corporations that contain at least one nonresidential strata lot. The Schedule of Voting Rights provides a definitive record in these cases. Its absence for a strata corporation is apt to create confusion. Another advantage of amending the legislation is to create consistency and certainty in the practice and procedure for this area.

But there may be downsides to a legislative amendment. The change would result in marginally less flexibility and greater costs for owner-developers in developing a strata property.

The committee’s recommendation for reform

For strata plans that include at least one nonresidential strata lot, the committee favours moving from a permissive (“may”) provision on filing a Schedule of Voting Rights to a mandatory (“must”) provision. In its view, such an amendment will promote certainty for strata-lot owners and good practice for owner-developers.

This proposed reform commanded near-unanimous support in the public consultation.

476. See *ibid*, ss 247 (1) (“the person applying to deposit the strata plan may establish a Schedule of Voting Rights in the prescribed form that sets out the number of votes per strata lot”), 248 (1) (“the person applying to deposit the strata plan may submit to the superintendent for approval a Schedule of Voting Rights in the prescribed form that sets out the number of votes per strata lot in a way that is different from the requirements of section 247”).

The committee recommends:

24. *The Strata Property Act should require the following in cases in which a strata plan has at least one nonresidential strata lot: (a) if voting rights are not to be approved by the superintendent of real estate, the person applying to deposit the strata plan must establish a Schedule of Voting Rights in the prescribed form; (b) if voting rights are to be approved by the superintendent of real estate, the person applying to deposit the strata plan must submit to the superintendent for approval a Schedule of Voting Rights in the prescribed form.*

Issues for Reform—Amalgamation

Amalgamation generally

Although the term can be used “in a loose, non-legal sense,”⁴⁷⁷ *amalgamation* is a “effectively a term of art”⁴⁷⁸ in corporate law. As the leading Canadian case puts it, the effect of corporate amalgamation is “to have the amalgamating companies continue without subtraction in the amalgamated company, with all their strengths and their weaknesses, their perfections and imperfections, and their sins, if sinners they be.”⁴⁷⁹ “[T]he end result,” of an amalgamation for the amalgamating corporations, “is to coalesce to create a homogeneous whole. The analogies of a river formed by the confluence of two streams, or the creation of a single rope through the intertwining of strands have been suggested by others.”⁴⁸⁰

The way to achieve this result is to employ “specific statutory procedures.”⁴⁸¹ There are several such procedures in British Columbia law, each geared to a specific type of corporation.⁴⁸²

477. Continuing Legal Education Society of British Columbia, ed, *British Columbia Company Law Practice Manual*, 2nd ed, vol. 1 (Vancouver: Continuing Legal Education Society of British Columbia, 2003) (loose-leaf 2016 update) at § 11.2.

478. Kevin P McGuiness, *Canadian Business Corporations Law*, 2nd ed (Markham, ON: LexisNexis Canada, 2007) at § 14.89.

479. *R v Black and Decker Manufacturing Co*, [1975] 1 SCR 411 at 422, 43 DLR (3d) 393, Dickson J [*Black and Decker*].

480. *Ibid* at 421.

481. *British Columbia Company Law Practice Manual*, *supra* note 477 at § 11.2.

482. See e.g. *Business Corporations Act*, SBC 2002, c 57, ss 273 (vertical short-form amalgamations), 274 (horizontal short-form amalgamations), 276 (amalgamations with court approval); *Cooperative Association Act*, SBC 1999, c 28, ss 191–193; *Societies Act*, SBC 2015, c 18, ss 86–91.

Given its transformative nature, amalgamation is typically considered by corporate- and strata-law commentators to be a fundamental change.⁴⁸³

Development of the law

Strata corporations have been able to amalgamate since 1973.⁴⁸⁴ The original 1973 amalgamation provision:

- was limited to “strata corporations owning adjacent land”;⁴⁸⁵
- called for the amalgamating strata corporations to enter into an “amalgamation agreement prescribing the terms and conditions of the amalgamation”;⁴⁸⁶
- required approval of the amalgamation agreement by special resolutions or unanimous resolutions of the amalgamating strata corporations;⁴⁸⁷ and
- required approval of the amalgamation by the supreme court.⁴⁸⁸

If the court approved the amalgamation, then the procedure called for filing the following documents with the registrar of land titles:

- the agreement;
- a copy of the order;
- “proof of compliance with any terms or conditions imposed by the Court order”; and
- “an explanatory plan showing the consolidated lands.”⁴⁸⁹

The effect of the amalgamation was spelled out in the legislation:

483. See e.g. *British Columbia Strata Property Practice Manual*, *supra* note 2 at § 23.24; McGuiness, *supra* note 478 at ch 14 (discussing amalgamation among other “fundamental changes”).

484. See *Strata Titles (Amendment) Act*, SBC 1973, c 86, s 4 (enacting s 16A of the *Strata Titles Act*, *supra* note 25).

485. *Ibid*, s 16A (1).

486. *Ibid*, s 16A (1).

487. See *ibid*, s 16A (1).

488. See *ibid*, s 16A (1).

489. See *ibid*, s 16A (5) (a)–(d).

From the date of the deposit of the strata plan the amalgamating strata corporations shall be amalgamated and shall be continued as one corporation under the name endorsed on the agreement, and, thereafter, the amalgamated corporation shall be seised of and shall hold and possess all the property, rights, and interests and shall be subject to all debts, liabilities, and obligations of each amalgamating corporation, and every owner in each amalgamating corporation shall be bound by the terms of the agreement.⁴⁹⁰

The requirements that amalgamating strata corporations own adjacent land and that their amalgamation agreement be approved by the supreme court as well as the option to authorize amalgamation by way of unanimous resolution were all dropped in the major revision to strata-property law that took place in the following year.⁴⁹¹ After these changes, the provision was not amended again until the advent of the *Strata Property Act*.⁴⁹²

Amalgamation under the Strata Property Act

The *Strata Property Act*'s provisions⁴⁹³ on amalgamation are largely consistent with the provisions in the preceding legislation.⁴⁹⁴ Amalgamating strata corporations under strata-property legislation continues to require:

- an amalgamation agreement that contains
 - the terms and conditions of the amalgamation, and
 - the bylaws that will apply to the proposed amalgamated strata corporation;⁴⁹⁵ [and]
- a resolution approving the amalgamation agreement . . . passed by each of the amalgamating strata corporations by a 3/4 vote at an annual or special general meeting.⁴⁹⁶

The application to amalgamate still must be made to the registrar, with the following documents:

- the amalgamation agreement, [and]

490. *Ibid*, s 16A (6).

491. See *Strata Titles Act*, *supra* note 26, s 32.

492. *Supra* note 5.

493. See *ibid*, ss. 269–271.

494. See *Condominium Act*, *supra* note 28, s 61.

495. *Supra* note 5, s 269 (1).

496. *Ibid*, s 269 (2) (a).

- a reference or explanatory plan,⁴⁹⁷ whichever the registrar requires, that
 - consolidates the strata plans into a single strata plan,
 - complies, as far as the registrar considers necessary, with sections 244 [strata plan requirements] and 245 [strata plans: accompanying documents], and
 - is in a form required under the *Land Title Act* for a reference or explanatory plan.⁴⁹⁸

But, in addition to these documents, the application to the registrar must also be accompanied by the following documents, which are needed to bring certain aspects of the amalgamation process into line with other requirements of the *Strata Property Act*:

- a new Schedule of Unit Entitlement that meets the requirements of section 246 [Schedule of Unit Entitlement], together with evidence of the superintendent's approval if the approval is required,
- if a Schedule of Voting Rights has been filed with the superintendent, a new Schedule of Voting Rights that meets the requirements of section 247 [Schedule of Voting Rights not approved by superintendent] or 248 [Schedule of Voting Rights approved by superintendent], together with evidence of the superintendent's approval if the approval is required,
- a Certificate of Strata Corporation in the prescribed form from each strata corporation, stating that the resolution [approving the amalgamation agreement] has been passed and that the reference or explanatory plan and the new Schedule of Unit Entitlement and any new Schedule of Voting Rights conform to the amalgamation agreement, and
- any bylaws of the amalgamated strata corporation that differ in any respect from the Standard Bylaws.⁴⁹⁹

The effect of amalgamation under the *Strata Property Act* is the same as under previous strata-property legislation:

497. See *Land Title Act*, *supra* note 19, ss. 1 “explanatory plan” (“means a plan that (a) is not based on a survey but on existing descriptions, plans or records of the land title office, and (b) is certified correct in accordance with the records of the land title office by a British Columbia land surveyor or by (i) a person designated under section 121 (7) of the *Forest Act* for the purpose of that section, or (ii) the minister charged with the administration of the *Transportation Act*”), 67 (requirements as to subdivision and reference plans); *Land Title Practice Manual*, *supra* note 233, vol 1 at § 7.487 (“A reference plan is based on a ground survey done by a British Columbia land surveyor and generally refers to a single parcel.”).

498. *Supra* note 5, s 269 (2) (b) (i)–(ii).

499. *Ibid*, s 269 (2) (b) (iii)–(vi).

- the amalgamating strata corporations are amalgamated and are continued as one strata corporation under the name endorsed on the amalgamation agreement,
- the amalgamated strata corporation is seized of, and holds and possesses, the property, rights and interests and is subject to the liabilities and obligations of each amalgamating strata corporation,
- the bylaws of the amalgamated strata corporation are the Standard Bylaws except to the extent that different bylaws have been filed with the registrar [as part of the application to the registrar], and
- each owner in each amalgamating strata corporation is bound by the terms of the amalgamation agreement.⁵⁰⁰

Reasons for amalgamating

In the corporate world, amalgamation is pursued for business reasons. Amalgamation is, in the words of a leading case, seen as “a legal means of achieving an economic end.”⁵⁰¹ Amalgamating companies’ goals are “to build, to consolidate, perhaps to diversify, existing businesses; so that through union there will be enhanced strength. It is a joining of forces and resources in order to perform better in the economic field.”⁵⁰²

These considerations don’t apply to strata corporations, so it isn’t surprising to learn that “[a]malgamations of strata corporations are not common in British Columbia.”⁵⁰³ But, of course, simply because they are not common does not mean they do not take place. In fact, strata corporations may be motivated to amalgamate for a more diverse set of reasons than business corporations, which are largely guided by economic objectives in amalgamation. One example cited in the commentary suggested that amalgamation may be used to provide “greater administrative efficiency by sharing the use of common facilities to the mutual benefit of the strata lot owners.”⁵⁰⁴ But there may be a whole host of other reasons for wanting to amalgamate strata corporations.

500. *Ibid*, s 271.

501. *Black and Decker*, *supra* note 479 at 420.

502. *Ibid*.

503. *British Columbia Strata Property Practice Manual*, *supra* note 2 at § 23.24.

504. *Ibid*.

Should the Strata Property Act require a resolution passed by an 80-percent vote to approve an amalgamation agreement?

Brief description of the issue

This issue is a departure from the other issues considered in this chapter. In every other issue dealing with the voting threshold, the legislation requires a resolution passed by a unanimous vote, which is its highest voting threshold. In this case, the *Strata Property Act* requires a resolution passed by a 3/4 vote to approve an amalgamation agreement.⁵⁰⁵ So the question here is should the act be amended to raise this voting threshold to an 80-percent vote?

Discussion of options for reform

The main reason for proposing this reform would be to create some consistency with other fundamental changes involving strata corporations. Consistency would bring several subsidiary benefits, such as making the statute simpler and more accessible.

Another rationale for raising the voting threshold would be that a higher threshold would provide more protection for minority interests. Amalgamation is a significant change for a strata corporation, one that could affect the property rights of strata-lot owners. Allowing it to be approved by a resolution passed by a 3/4 vote creates the possibility of an amalgamation going ahead with the support of a relatively small group of owners, since the 3/4-vote threshold need only be reached by “the votes cast by eligible voters who are present in person or by proxy at the time the vote is taken and who have not abstained from voting.”⁵⁰⁶ A higher voting threshold would also be in line with the approach taken in most other Canadian jurisdictions.⁵⁰⁷

505. See *supra* note 5, s 269 (2) (a) (“a resolution approving the amalgamation agreement must be passed by each of the amalgamating strata corporations by a 3/4 vote at an annual or special general meeting”).

506. *Supra* note 5, s 1 (1) “3/4 vote.” But see *ibid*, s 51 (allowing for reconsideration of resolution passed by a 3/4 vote when it is passed “by persons holding less than 50% of the strata corporation’s votes”).

507. See Saskatchewan: *The Condominium Property Act, 1993*, *supra* note 33, s 15 (4) (“Where the amalgamating corporations are proposing an amalgamation: (a) pursuant to subsection 14(1), the unanimous consent of all unit owners and holders of registered interests based on mortgages for each of the amalgamating corporations must be obtained; or (b) pursuant to subsection 14(2), the consent of 80% of all unit owners and holders of registered interests based on mortgages for each of the amalgamating corporations must be obtained.”); Manitoba: *The Condominium Act*, *supra* note 33, ss 1 (1) “specified percentage” (“(a) in relation to a requirement in this Act for the written consent of unit owners for any matter, means 80% or, if a greater percentage is specified in the declaration for that matter, that percentage specified in the declara-

But the problem with raising the voting threshold for protective reasons is that it isn't clear that anyone is actually being harmed by the current, lower threshold. There have been no published complaints about it. The current threshold would also allow for greater flexibility in planning for amalgamation and a more streamlined process of approval.

The committee's recommendation for reform

The committee noted that amalgamation is rarely encountered in strata-property practice. When it occurs, it tends to be a response to a highly unusual set of circumstances. The committee is unaware of any problems or abuses flowing from the relatively low voting threshold required to approve an amalgamation agreement. In the absence of real-world problems, the committee is reluctant to propose raising this voting threshold.

Consultation respondents supported the committee's proposal, by a wide margin.

The committee recommends:

25. The Strata Property Act should continue to require a resolution passed by a 3/4 vote to approve an amalgamation agreement.

tion"), 253; Ontario: *Condominium Act, 1998*, *supra* note 33, s 120 (1) (b) (requiring that "the owners of at least 90 per cent of the units of each corporation as of the date of that corporation's meeting have, within 90 days of the meeting, consented in writing to the registration of the declaration and description" that authorizes the amalgamation); Nova Scotia: *Condominium Act*, *supra* note 33, s 29B (1) (b) ("the owners of at least eighty per cent of the units of each corporation vote in favour of approving the declaration and description"); Newfoundland and Labrador: *Condominium Act, 2009*, *supra* note 33, s 66 (1) (b) ("the owners of at least 80% of the units of each corporation vote in favour of approving the declaration and description"); Northwest Territories and Nunavut: *Condominium Act*, *supra* note 33, s 6.2 (2) ("Corporations that are proposing to amalgamate must each obtain the written consent of the persons owning 80% of the common elements, or such greater percentage as may be specified in the declaration."). Two provinces have amalgamation provisions that call for approval by voting majority that is broadly similar to British Columbia's resolution passed by a 3/4 vote. See Alberta: *Condominium Property Regulation*, Alta Reg 168/2000, s 50 (1) (special resolution); New Brunswick: *Condominium Property Act*, *supra* note 33, s 13 (2) ("the owners of at least 60% of the common elements of each corporation vote in favour of approving the declaration and description). Québec, Prince Edward Island, and Yukon don't appear to have amalgamation provisions in their legislation.

Chapter 6. Draft Legislation and Regulations

Draft legislation

Strata Property (Common Property, Land Titles, and Fundamental Changes) Amendment Act, 2019

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

- 1** *Section 1 (1) of the Strata Property Act, S.B.C. 1998, c. 42, is amended by repealing the definition of “limited common property” and substituting the following:*

“limited common property” means a form of common property, designated for the exclusive use of the owners of one or more strata lots; .

recommendation no. (2)

Comment: Section 1 (1) of the *Strata Property Act* currently defines *limited common property* to mean “common property designated for the exclusive use of the owners of one or more strata lots.” While it’s unclear whether this definition has generated any significant legal issues, it has apparently been a source of confusion in practice. The stumbling block appears to be whether the definition is intended to set limited common property off as a concept totally distinct from common property. In fact, the intent of the definition is actually to constitute limited common property as a subset of the broader class of common property. The amended definition set out in this draft section makes this point in clearer and more emphatic language.

- 2** *The following section is added to Part 3:*

Leases of common-property fixtures or common assets

- 6.1** (1) Subject to subsection (2), any lease
- (a) in respect of a fixture that is common property or of a common asset, and
 - (b) with a term that exceeds five years,

that is entered into by a strata corporation when the owner developer is exercising the powers and performing the duties of a council is void.

- (2) The Superintendent of Real Estate may authorize an owner developer to enter into a lease described in subsection (1), on the terms and conditions that the superintendent may require.
- (3) For the purposes of subsection (1), “fixtures” has the meaning set out in the regulations.
- (4) This section applies to every strata plan that is deposited in the land title office on or after the date that is six months after the date on which this section comes into force.

recommendation nos. (3), (4), and (5)

Comment: This draft provision addresses a source of frustration for many strata-lot owners: leases of common property or common assets that are entered into in the early days of a strata property by its owner-developer for long terms that end up binding the strata corporation well into its functional life. The draft provision implements three recommendations that respond to this frustration. First, it limits the term of leases entered into by an owner-developer of “a fixture that is common property or of a common asset” to five years. The quoted language will capture the kinds of property that have typically been the subject of such long-term leases, such as enterphones. Second, in recognition of the fact that some leases with long terms may be necessary for certain strata corporations (for example, in cases involving district energy systems), the provision creates a power for the superintendent of real estate to authorize such leases. Third, it defines the term *fixtures* by drawing on an existing definition in the *Strata Property Regulation* (which defines *fixtures* for insurance purposes to mean “items attached to a building, including floor and wall coverings and electrical and plumbing fixtures, but does not include, if they can be removed without damage to the building, refrigerators, stoves, dishwashers, microwaves, washers, dryers or other items”). The draft provision setting out this definition is found, below, at section 1 of the draft regulations. Finally, the draft provision concludes with a subsection that establishes its temporal application. The draft provision isn’t meant to apply to leases entered into in the past; its application is forward facing. This subsection is meant to underscore that point. Further, the draft provision allows some time for owner-developers and others to prepare for the change in the law. The committee has decided to set this period at six months after the date on which the section comes into force. This six-month period represents the committee’s best judgment on what adequate notice of a change in the law in these circumstances would be, recognizing that the committee—unlike the government—doesn’t (and can’t) have all the relevant information about the provision’s implementation date. Others—including the government—could reasonably draw a different conclusion on an appropriate notice period.

3 Section 70 (4) (b) is amended by striking out “a unanimous vote” and substituting “an 80% vote”.

recommendation no. (21)

Comment: Under section 70 (4) of the *Strata Property Act* when “an owner wishes to increase or decrease the habitable part of the area of a residential strata lot, by making a nonhabitable part of the strata lot habitable or by making a habitable part of the strata lot nonhabitable” the owner must “seek an amendment to the Schedule of Unit Entitlement under section 261.” Section 261 provides that a Schedule of Unit Entitlement may be amended “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 in accordance with section 246 (3) (a) (i) or on the basis of square footage in accordance with section 1 of the *Condominium Act*.” Such a change may be the result, for example, of enclosing a balcony that was part of the strata lot. In order to effect such an amendment to the Schedule of Unit Entitlement, “a resolution approving the amendment must be passed by a unanimous vote at an annual or special general meeting.” In the committee’s view, it would be desirable to change this requirement from a unanimous vote to an 80-percent vote. This change would give strata corporations greater flexibility, without sacrificing protection of minority interests. If the requirement in section 261 is changed, then the cross-reference to it in section 70 (4) (b) must also be changed.

4 Section 74 (2) is amended

(a) in paragraph (b), by striking out “and”,

(b) in paragraph (c), by striking out “limited common property.” and substituting “limited common property, and, and

(c) by adding the following paragraph:

(d) for every resolution passed under subsection (1) on or after the date on which this paragraph comes into force, is prepared by a British Columbia land surveyor.

recommendation no. (15)

Comment: Section 74 of the *Strata Property Act* deals with the designation of limited common property by a 3/4 vote. Subsection (2) deals with a sketch plan, which “must be filed in the land title office” in the land title office in order to make the designation effective. *Sketch plan* is defined in the *Land Title Act* to mean “an adequately dimensioned drawing of the area affected by a lease of all or part of a building located on land shown on a plan of survey deposited in the land title office.” Section 74 (2) of the *Strata Property Act* lists the requirements for a sketch plan that must be filed in connection with a designation of limited common property by a 3/4 vote: the plan must be one that “(a) satisfies the registrar, (b) defines the areas of limited common property, and (c) specifies each

strata lot whose owners are entitled to the exclusive use of the limited common property.” This draft provision proposes adding a new requirement as paragraph (d), which would require the sketch plan to be prepared by a professional British Columbia land surveyor. This requirement is intended to foster greater certainty in the identification of limited common property in strata properties. The requirement is introduced by language setting out the provision’s temporal application, which is meant to underscore the point that this requirement is intended to improve the law on an ongoing basis, and not to cast a shadow over any past uses of this provision, potentially exposing them to a legal challenge.

5 *The following section is added to Part 14:*

Approval of certain strata plans

- 243.1** (1) A strata plan that depicts the boundaries of strata lots as the exterior surface of a floor, wall, or ceiling, or as a boundary external to a building, must meet the same approval requirements as though it were a bare land strata plan.
- (2) This section applies to every strata plan deposited in the land title office on or after the date on which this section comes into force.

recommendation no. (10)

Comment: This draft provision is intended to be a targeted approach to an emerging issue in subdivision control. One nagging concern in this area is the persistence of strata plans that are functionally bare-land strata plans being deposited for registration in the land title office on the basis that they are building strata plans. The goal of this approach is to side-step the more rigorous local or regional approval process for bare-land strata plans. This draft provision describes a specific method that attempts to achieve this result and proceeds to undercut its rationale by requiring that the plan meet the same approval requirements as a bare-land strata plan. Subsection (2) is included in the draft provision out of caution. Its intent is to make it clear that the draft provision is only meant to apply to strata plans that are deposited in the land title office on or after the date the provision comes into force. The draft provision isn’t intended to be a mechanism to challenge strata plans deposited before that date. For the purposes of this report, the committee decided that the draft legislation should be clear and explicit on this point. There is a strong presumption that legislation operates prospectively, which is partially codified in sections 36 and 37 of the *Interpretation Act* and is also supported by the common law. In implementing this provision, it may be open to the legislature to rely on this provision instead of express legislative language.

6 Section 244 is amended

(a) in subsection (1), by adding the following paragraphs:

(a.1) contain a depiction of part of the lands or building as common property,

(c.1) contain a minimum of one cross-section, , **and**

(b) by adding the following subsection:

(1.1) Subsection (1) (a.1) and (c.1) apply to every strata plan filed on or after the date on which the paragraphs come into force.

recommendation nos. (12) and (13)

Comment: Section 244 (1) of the *Strata Property Act* lists the requirements for strata plans. This draft provision would add two new requirements to that list, to address land-title issues that have arisen in practice. The first requirement makes it clear that a strata plan must include a depiction of part of the lands or building as common property. In addition to clarifying the act, this draft provision could help to stamp out some questionable subdivision practices. The second requirement is intended to provide greater clarity in the depiction of common property on a strata plan. Subsection (1.1) is included in the draft provision out of caution. Its intent is to make it clear that the two new requirements found in paragraphs (a.1) and (c.1) are only meant to apply to strata plans that are deposited in the land title office on or after the date they come into force. These requirements aren't intended to be a mechanism to challenge strata plans deposited before that date. For the purposes of this report, the committee decided that the draft legislation should be clear and explicit on this point. There is a strong presumption that legislation operates prospectively, which is partially codified in sections 36 and 37 of the *Interpretation Act* and is also supported by the common law. In implementing this provision, it may be open to the legislature to rely on this provision instead of express legislative language.

7 Section 247 (1) is amended by striking out “may” and substituting “must”.

recommendation no. (24)

Comment: Section 247 of the *Strata Property Act* deals with establishing a Schedule of Voting Rights in cases in which the schedule won't require approval by the superintendent of real estate. Subsection (1) currently provides that “[i]f a strata plan has at least one nonresidential strata lot, the person applying to deposit the strata plan may establish a Schedule of Voting Rights in the prescribed form that sets out the number of votes per strata lot.” The draft provision would replace the word *may* with *must*, making it clear that the section contains a mandatory requirement—which effectively is the case already in any strata property containing a nonresidential strata lot.

8 Section 248 (1) is amended by striking out “may” and substituting “must”.

recommendation no. (24)

Comment: This draft provision is a companion to the previous draft provision. Section 248 of the *Strata Property Act* deals with establishing a Schedule of Voting Rights in cases in which the schedule does require approval by the superintendent of real estate. Subsection (1) currently provides “[i]f a strata plan has at least one nonresidential strata lot, the person applying to deposit the strata plan may submit to the superintendent for approval a Schedule of Voting Rights in the prescribed form that sets out the number of votes per strata lot in a way that is different from the requirements of section 247.” The draft provision would make it clear that submission of the schedule is a mandatory requirement in these circumstances.

9 Section 257 is amended

(a) by repealing paragraph (a) and the substituting the following:

- (a) to amend a strata plan to designate limited common property, a resolution approving the amendment must be passed by an 80% vote at an annual or special general meeting; ,

(b) by adding the following paragraph:

- (a.1) to amend a strata plan to remove a designation of limited common property made by the owner developer at the time the strata plan was deposited or by amendment of the strata plan, a resolution approving the amendment must be passed by a unanimous vote at an annual or special general meeting; , **and**

(c) in paragraph (b) (ii), by adding “or (a.1), as applicable,” after “paragraph (a)”.

recommendation nos. (17) and (18)

Comment: Section 257 of the *Strata Property Act* sets out the requirements that must be met to amend the strata plan to designate limited common property or to remove a designation of limited common property. The section currently requires that “a resolution approving the amendment must be passed by a unanimous vote at an annual or special general meeting.” In the committee’s view, the voting threshold for amending a strata plan to designate limited common property should be lowered to an 80-percent vote. But the threshold should remain at a unanimous vote for removing a designation. The different treatment is justified by the different potential for abuse of minority interests.

10 Section 258 is amended

(a) by repealing the heading and substituting the following:

Parking or storage designated by owner developer as limited common property ,

(b) by striking out “first annual general meeting” wherever it appears and substituting “fifth annual general meeting”,

(c) in subsections (1) and (2), by adding “or storage lockers” after “parking stalls” wherever it appears,

(d) in subsection (3), by striking out “each” and substituting “a”,

(e) by adding the following subsections:

(4.1) An owner developer may, at any time before the fifth annual general meeting of the strata corporation, amend the strata plan to designate a maximum of 2 extra storage lockers as limited common property for the exclusive use of the owners of a strata lot in the strata plan.

(4.2) In this section, “**extra storage lockers**” means any storage lockers, on land shown on the strata plan as set aside for storage, that are in addition to the total number of storage lockers needed to provide one locker per strata lot.

(f) in subsection (5), by adding the words “or extra storage lockers under subsection (4.1)” after “extra parking stalls under subsection (3)”,

(g) by repealing subsection (6) and the substituting the following:

(6) A designation of parking stalls or storage lockers under subsections (1), (3) or (4.1):

(a) does not require approval by a resolution at an annual general meeting or special general meeting;

(b) does require that the owner developer must give the strata corporation written notice of an amendment of the strata plan. , **and**

(h) by adding the following subsection:

(8) This section only applies when the owner developer has not conveyed all the strata lots. .

recommendation no. (7)

Comment: Section 258 of the *Strata Property Act* currently empowers the owner-developer to “amend the strata plan to designate parking stalls as limited common prop-

erty for the exclusive use of owners of strata lots in the strata plan” and to “amend the strata plan to designate a maximum of 2 extra parking stalls as limited common property for the exclusive use of the owners of each strata lot in the strata plan.” In each case, the owner-developer is bound by a broad duty to “act honestly and in good faith and exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.” Despite this duty, there have been concerns that this power is being used in ways that ultimately cause confusion for the strata corporation. Much of the attention has focused on the use of leases and licences in some strata corporation. The committee recommends taking a balanced approach to rein in confusing practices. In a draft provision set out below, it declares leases and licences of parking stalls or storage lockers by the owner-developer to be void. In addition, the committee recommends extending the period in which the owner-developer may amend the strata plan under section 258 from the date of the strata corporation’s first annual general meeting to the date of the fifth annual general meeting. This recommended change is dealt with in paragraph (a) of the draft provision. Paragraph (d) contains a clarifying amendment. In the committee’s view, the reference in subsection (3) of the current section 258 to designating limited common property “for the exclusive use of the owners of each strata lot in the strata plan” is ambiguity. This ambiguity may be clarified by changing one word: “each.” Replacing *each* with *a* would remedy the ambiguity. Paragraphs (g) and (h) deal with some of the potential implications of this changes brought in by the amendments to paragraph (a). Paragraph (a) extends the period in which an owner-developer may amend the strata plan out beyond the point at which control of the strata corporation passes from the owner-developer to the elected strata council. So paragraph (g) requires an owner-developer to keep the strata corporation informed of any changes to the strata plan under this section. The extended period under section 258 also creates the potential that an owner-developer could retain the power to amend the strata plan even when the owner-developer no longer holds an interest in the strata property. Paragraph (h) is intended to foreclose this possibility by restricting the application of section 258 to only that time in which the owner-developer is the owner of at least one strata lot. Finally, the committee has decided to extend this section’s reach, to embrace storage lockers. The amendments needed to accomplish this task are found in paragraphs (c), (e), and (f). They provide for the section to operate for storage lockers in the same manner as it operates for parking stalls, with one small difference. The definition of *extra parking stalls*, which is currently found in section 258 (4), ties into the reality that provision of parking stalls is regulated by local governments. Similar local-government requirements don’t exist for storage lockers, so the draft provision defines *extra storage lockers* by reference to the number of storage lockers needed to ensure that each strata lot has a storage locker.

11 The following sections are added to Part 15:

Undesignated parking stalls or storage lockers

258.1 Any parking stalls or storage lockers that have not been designated as limited common property under section 258 by the strata corporation’s fifth annual general meeting remain common property.

recommendation no. (8)

Comment: This draft provision is intended to remove any doubts about the classification of parking stalls or storage lockers on a strata plan that haven't been designated as limited common property under section 258.

Lease or licence of parking stall or storage locker by owner developer void

- 258.2** (1) Any lease or licence of a parking stall or storage locker entered into before or after the deposit of a strata plan by the owner developer is void.
- (2) This section applies to every strata plan deposited in the land title office on or after a date that is six months after the date on which this section comes into force.

recommendation no. (6)

Comment: Leases and licences of parking stalls and (to a lesser extent) storage lockers have caused confusion in many strata properties and have sown conflict in others. In the committee's view, they can be eliminated, if this change is enacted in concert with the changes proposed in the previous two draft provisions. Subsection (1) of this draft provision provides that such leases or licences are void, whether they are made before or after the deposit of a strata plan in the land title office. Subsection (2) establishes the draft provision's temporal application. The draft provision isn't meant to apply to leases or licences entered into in the past; its application is forward facing. This subsection is meant to underscore that point. Further, the draft provision allows some time for owner-developers and others to prepare for the change in the law. The committee has decided to set this period at six months after the date on which the section comes into force. This six-month period represents the committee's best judgment on what adequate notice of a change in the law in these circumstances would be, recognizing that the committee—unlike the government—doesn't (and can't) have all the relevant information about the provision's implementation date. Others—including the government—could reasonably draw a different conclusion on an appropriate notice period.

12 Section 261 (1) (a) is amended by striking out "a unanimous vote" and substituting "an 80% vote".

recommendation no. (21)

Comment: Under section 70 (4) of the *Strata Property Act* when "an owner wishes to increase or decrease the habitable part of the area of a residential strata lot, by making a nonhabitable part of the strata lot habitable or by making a habitable part of the strata lot nonhabitable" the owner must "seek an amendment to the Schedule of Unit Entitlement

under section 261.” Section 261 deals with the procedural requirements for amending a Schedule of Unit Entitlement in a specific circumstance. This circumstance occurs when an amendment is called for “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 in accordance with section 246 (3) (a) (i) or on the basis of square footage in accordance with section 1 of the *Condominium Act*.” Such a change may be the result, for example, of enclosing a balcony that was part of the strata lot. In order to effect such an amendment to the Schedule of Unit Entitlement, “a resolution approving the amendment must be passed by a unanimous vote at an annual or special general meeting.” The committee recommended changing this requirement for a unanimous vote to a requirement for an 80-percent vote. This change is appropriate in this case to give strata corporations added flexibility without compromising minority interests. A cross-reference to section 261 (1) (a) found in section 70 (4) (b) is dealt with earlier in this draft legislation.

13 *Section 263 (2) (a) is amended by striking out “a unanimous vote” and substituting “an 80% vote”.*

recommendation no. (20)

Comment: Section 263 of the *Strata Property Act* deals with amending a strata plan to add a strata lot to common property. Among the requirements set out in section 263 (2) is a requirement that “a resolution approving the amendment must be passed by a unanimous vote at an annual or special general meeting.” In the committee’s view, this requirement may be changed to a requirement for an 80-percent vote, which would give strata corporations greater flexibility in carrying out this procedure.

Commencement

14 This Act comes into force by regulation of the Lieutenant Governor in Council.

recommendation no. n/a

Comment: This is a standard provision found in British Columbia legislation. It gives the cabinet (formally designated as the “Lieutenant Governor in Council”) the power to control the timing of when the legislation comes into force. A transitional period would help to ensure that people in the strata sector are prepared for the changes that this legislation will bring.

Draft regulations

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that the Strata Property Regulation, B.C. Reg. 43/2000, is amended as set out in the attached schedule.

SCHEDULE

1 *Part 3 of the Strata Property Regulation, B.C. Reg. 43/2000, is amended by adding the following section:*

Definition for section 6.1 of the Act

3.01 For the purposes of section 6.1 of the Act, “**fixtures**” means items attached to a building, including floor and wall coverings and electrical and plumbing fixtures, but does not include, if they can be removed without damage to the building, refrigerators, stoves, dishwashers, microwaves, washers, dryers or other items.

recommendation no. (4)

Comment: Proposed section 6.1 is dealt with in the draft legislation, above. The draft provision would address long-term leases of common property that is fixtures by an owner-developer. To add clarity to the draft provision, the committee recommended applying the existing definition of *fixtures* found in section 9.1 of the *Strata Property Regulation*. This draft regulation makes that definition applicable to the committee’s proposed section 6.1.

2 *Section 13.6 is amended by adding the words “or storage lockers” after “parking stalls”, by adding the word “fifth” before “annual general meeting” and by striking out “required by the deposit of that phase under section 230 of the Act”.*

recommendation no. n/a

Comment: Section 13.6 currently reads, “[f]or the purposes of section 258 of the Act, an owner developer may amend a phased strata plan to designate parking stalls as limited common property in a phase only up to the date of the annual general meeting required by the deposit of that phase under section 230 of the Act.” The draft legislation set out earlier in this report contains significant amendments to section 258, notably extending the period in which an owner-developer may amend the strata plan under the section from the date of the first annual general meeting to the date of the fifth annual general meeting, and extending the reach of the section to embrace storage lockers in addition to

parking stalls. This draft provision is intended to bring section 13.6 of the regulation into line with the proposed changes to section 258 of the act.

3 Section 14.1 is repealed and the following substituted:

Definition for sections 241 and 242 of the Act

14.1 For the purposes of sections 241 and 242 of the Act, “**previously occupied**” means occupied at any time in its past for any purpose, including residential, commercial, institutional, recreational or industrial use, but does not include the occupation of a proposed strata lot

(a) by the owner developer solely as a display lot for the sale of strata lots, or

(b) for temporary construction purposes,

in the proposed strata plan.

recommendation no. (11)

Comment: Under section 242 (2), “[i]f a person applying to deposit a strata plan wishes to include in the strata plan a previously occupied building, the person must submit the proposed strata plan to the approving authority” for the authority’s review and approval. Section 14.1 of the *Strata Property Regulation* currently defines *previously occupied* to mean, “[f]or the purposes of sections 241 and 242 of the Act, . . . occupied at any time in its past for any purpose, including residential, commercial, institutional, recreational or industrial use, but does not include the occupation of a proposed strata lot by the owner developer solely as a display lot for the sale of strata lots in the proposed strata plan.” This draft provision would add a reference to structures that are built “for temporary construction purposes.” The status of such structures is an emerging practice issue, particularly for land surveyors. (Section 241 of the *Strata Property Act* calls on land surveyors to issue an “endorsement of nonoccupancy,” in the following circumstances: “[i]f a strata plan includes a building that has not been previously occupied, the plan must be endorsed by a British Columbia land surveyor certifying that the building has not been previously occupied.”) Carving structures that are used for temporary construction purposes out of the definition of *previously occupied* would clarify this practice point.

4 Section 14.4 (1) (i) is repealed and the following substituted:

- (i) the strata plan must include any representations, including cross-section drawings of the building, to identify and locate the common property, including the limited common property, and the strata lots and floors within the building; .

recommendation no. (14)

Comment: Section 14.4 (1) of the *Strata Property Regulation* sets out a list of strata-plan requirements. Paragraph (i) of the section currently reads: “the strata plan must include any representations, including an elevation or sectional drawing of the building, that the registrar [of land titles] may consider necessary to identify and locate the strata lots and floors within the building.” The draft provision adds more detail to the list and supports the committee’s recommendation to amend section 241 of the *Strata Property Act* and require that a strata plan “contain a minimum of one cross-section.”

Chapter 7. Conclusion

This report has addressed three components of a system that serves to define strata properties as interests in land. As a whole, this system continues to serve participants in the strata-property sector well. But, as this report has recommended, the system does need upgrading and improving. This report provides a blueprint of improvements that would enhance the current system and would benefit the strata-property sector as a whole.

APPENDIX A

List of Recommendations

Common property—defining common property

1. *The Strata Property Act's definition of "common property" should not be amended. (32–35)*

2. *The Strata Property Act's definition of "limited common property" should be amended to read as follows: " 'limited common property' means a form of common property, designated for the exclusive use of the owners of one or more strata lots." (35–36)*

Common property—transactions involving common property

3. *The Strata Property Act should provide that any lease, entered into by the owner-developer, of a fixture that is common property or of a common asset must not have a term that exceeds five years. (40–43)*

4. *For the purpose of the previous recommendation, the definition of "fixtures" found in section 9.1 of the Strata Property Regulation (" 'fixtures' means items attached to a building, including floor and wall coverings and electrical and plumbing fixtures, but does not include, if they can be removed without damage to the building, refrigerators, stoves, dishwashers, microwaves, washers, dryers or other items") should apply. (43–45)*

5. *The Strata Property Act should provide that the Superintendent of Real Estate for British Columbia has the authority to approve a lease of a fixture that is common property or of a common asset entered into by the owner-developer with a term that exceeds five years. (45–46)*

Common property—parking stalls and storage lockers

6. *The Strata Property Act should provide that any lease or licence of a parking stall or storage locker entered into before or after the deposit of a strata plan by the owner-developer is void. (48–50)*

7. Section 258 of the Strata Property Act should be amended by: (a) striking out the words “first annual general meeting” wherever they appear and replacing them with “fifth annual general meeting”; (b) adding a new subsection that reads “This section only applies when the owner-developer has not conveyed all the strata lots”; (d) amending subsection (6) to read “A designation of parking stalls or storage lockers under subsections (1) or (3): (a) does not require approval by a resolution at an annual general meeting or special general meeting; (b) the owner-developer must give the strata corporation written notice of an amendment of the strata plan”; and (e) making such amendments as are necessary to expand the scope of the section to embrace storage lockers. **(50–52)**

8. The Strata Property Act should provide that at the strata corporation’s fifth annual general meeting any parking stalls or storage lockers that have not been designated as limited common property under section 258 remain common property. **(52)**

Land titles—emerging issues in subdivision control

9. The Strata Property Act should not provide that all strata plans require the approval of an approving officer. **(63–66)**

10. The Strata Property Act should provide that a strata plan that depicts the boundaries of strata lots as the exterior surface of a floor, wall, or ceiling, or as a boundary external to a building, must meet the same approval requirements as though it were a bare-land strata plan. **(66–69)**

11. Section 14.1 of the Strata Property Regulation should be amended to read “For the purposes of sections 241 and 242 of the Act, ‘**previously occupied**’ means occupied at any time in its past for any purpose, including residential, commercial, institutional, recreational or industrial use, but does not include the occupation of a proposed strata lot (a) by the owner developer solely as a display lot for the sale of strata lots, or (b) for temporary construction purposes, in the proposed strata plan.” **(69–70)**

Land titles—depicting common property for strata plans

12. The Strata Property Act should expressly require a strata plan to include a depiction of part of the lands or building as common property. **(73–74)**

Land titles—depicting the vertical limits of limited common property for strata plans

13. Section 244 (1) of the Strata Property Act should be amended to provide that all strata plans are required to include a minimum of one cross-section. **(75–76)**

14. Section 14.4 (1) (i) of the Strata Property Regulation should be amended to read: “the strata plan must include any representations, including cross-section drawings of the building, to identify and locate the common property, including the limited common property, and the strata lots and floors within the building.” (76–77)

15. Section 74 (2) of the Strata Property Act should be amended by adding the following as paragraph (d): “is prepared by a British Columbia land surveyor.” (77–78)

Land titles—certificate of payment

16. The Strata Property Act should continue not to provide that a registrar of titles must only accept a transmission of a strata lot for registration in the land title office if it is accompanied by a current Certificate of Payment. (82–83)

Fundamental changes—amending a strata plan

17. The Strata Property Act should require a resolution passed by an 80-percent vote to authorize amending a strata plan to designate limited common property. (98–100)

18. The Strata Property Act should continue to require a resolution passed by a unanimous vote to authorize amending a strata plan to remove a designation of limited common property. (100–101)

19. The Strata Property Act should continue, in those cases not covered by an exemption, to require a resolution passed by a unanimous vote to authorize amending a strata plan to add to, consolidate, or divide a strata lot. (101–103)

20. The Strata Property Act should require a resolution passed by an 80-percent vote to authorize amending a strata plan to add a strata lot to common property. (103–104)

Fundamental changes—schedules to the strata plan

21. The Strata Property Act should require a resolution passed by an 80-percent vote 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. (113–115)

22. The Strata Property Act should continue to require a resolution passed by a unanimous vote to authorize agreeing to use one or more different formulas, other than the formulas set out in section 99 of the act and in the regulations, for the calculation of a

strata lot's share of the contribution to the operating fund and contingency reserve fund. (115-117)

23. The Strata Property Act should continue to require a resolution passed by a unanimous vote to approve a special levy when each strata lot's share of the special levy is calculated in a way other than in accordance with sections 99, 100, or 195 of the act. (117-118)

24. The Strata Property Act should require the following in cases in which a strata plan has at least one nonresidential strata lot: (a) if voting rights are not to be approved by the superintendent of real estate, the person applying to deposit the strata plan must establish a Schedule of Voting Rights in the prescribed form; (b) if voting rights are to be approved by the superintendent of real estate, the person applying to deposit the strata plan must submit to the superintendent for approval a Schedule of Voting Rights in the prescribed form. (118-120)

Fundamental changes—amalgamation

25. The Strata Property Act should continue to require a resolution passed by a 3/4 vote to approve an amalgamation agreement. (125-126)

APPENDIX B

Biographies of Project-Committee Members

Patrick Williams is a partner of the Vancouver law firm Clark Wilson LLP and a member of the firm's Strata Property Group. He is also a member of the Alternative Dispute Resolution Practice Group. Patrick's practice focusses on assisting strata corporations, developers, and strata-lot owners with dispute resolution. He is an experienced and qualified arbitrator and mediator who has managed numerous strata-property, real-estate, and construction disputes.

Patrick has written and published many articles on issues impacting the strata-property industry, including construction-related problems experienced by owners, property managers, and developers. He is a regular contributor to industry periodicals and regularly delivers presentations and seminars to industry groups, strata corporations, and property managers. He has also published articles regarding the use and benefit of arbitration and mediation as an alternative to court and is a frequent guest instructor for the mediation component of the Professional Legal Training Course required to be taken by all articulated students in British Columbia.

Patrick received his dispute resolution training through the Continuing Legal Education Society of British Columbia and the British Columbia Arbitration and Mediation Institute. He obtained his Bachelor of Commerce degree in 1973 and his Bachelor of Laws degree in 1974, from the University of British Columbia.

Veronica Barlee (committee member July 2014–present) is a senior policy advisor with the provincial government's Office of Housing and Construction Standards. For the past seven years, Veronica has worked on strata legislation, regulations, policies, and issues. Strata housing is a vital economic driver and a key housing choice in British Columbia, providing almost 25% of the province's housing stock. Veronica's professional background includes extensive policy-development and management experience in the private, public, and not-for-profit sectors, including small business, fundraising, forest-fire fighting, and community services. Her MBA from the University of Alberta is augmented by ongoing professional development in policy development, stakeholder consultation, public engagement, and information management.

Larry Buttress (committee member October 2013–June 2016) was first licensed under the *Real Estate Act* in British Columbia in 1980. Working for his family's small, independent real-estate company, he sold residential and multi-family real estate, assisted in the company's property-management portfolio, and achieved his agent's qualifications in 1982. That same year he began working with the Real Estate Board of Greater Vancouver as the manager of its Multiple Listing Service. In 1986, he earned his Diploma in Urban Land Economics and became a member of the Real Estate Institute of British Columbia and the Real Estate Institute of Canada. In 1988, he was appointed as REBGV's executive officer, a position he held until 1995. In 1995, he joined JCI Technologies Inc. as director of real-estate services. He successfully negotiated that company's preferred supplier agreement with the Canadian Real Estate Association that led to the development of mls.ca, now REALTOR.ca, the largest and most frequently visited real-estate website in Canada.

Larry joined staff at the Real Estate Council of British Columbia in 1998 as its manager, industry practice. He has been an active participant in the Canadian Regulators Group as chair of its Internet Advertising Guidelines Task Force, chair of its Electronic Transactions Task Force, and vice-chair of its Agency Task Force. In 2003–04, Larry also served as the district vice-president of the Canadian District of ARELLO, the Association of Real Estate Licence Law Officials. Larry recently retired as the deputy executive officer of the Real Estate Council of British Columbia.

J. Garth Cambrey has over 28 years of experience in the property-management industry in British Columbia. Garth currently sits on the Real Estate Council of British Columbia, was the founding director and past vice-president of Strata Property Agents of BC and was a past director and vice-president of the Professional Association of Managing Agents (PAMA). He is an active member of the Real Estate Institute of British Columbia and is involved with various industry associations and committees. Garth has been appointed by the Supreme Court of British Columbia as an administrator under the *Strata Property Act* on 17 occasions and holds a Chartered Arbitrator designation with the ADR Institute of Canada, acting as an arbitrator in strata disputes. Garth is also involved in various advisory groups with the British Columbia government, providing support and advice with respect to provincial legislation, including the *Civil Resolutions Tribunal Act*.

Tony Gioventu is the executive director of the Condominium Home Owners Association of British Columbia (CHOA), a consumer association in British Columbia with over 200 000 members comprising strata corporations, owners, and business members who serve the strata industry. Tony is the weekly Condo Smarts columnist for *The Province*, *The Times Colonist*, and *24 Hours Vancouver*. Since 2002, Tony has written over 1000 columns and information bulletins dedicated to strata living and is the co-author of *A Practical Guide to Bylaws: The Strata Property Act*, and *Under-*

standing Governance: Strata Rules of order and procedures in British Columbia. Tony has served as a director/committee member for the Homeowner Protection Office, BC Building Envelope Council, Canadian Standards Association, the Real Estate Council of British Columbia, and continues to play an active role in research and development of building standards, legislation for strata corporations, and consumer protection.

With offices in New Westminster, Victoria, and Kelowna, CHOA provides service to its members throughout the province, promoting an understanding of strata living, and the interests of strata-property owners. On average the association fields 300 inquiries a day from owners, strata-council members, managers and agents, and delivers over 100 seminars annually on a variety of strata-related topics including governance, operations, and administration.

Ian Holt (committee member October 2016–April 2017) started his career in real-estate sales in 1993. He is currently a real-estate agent with Re/Max Real Estate Services in Vancouver. Ian specializes and has sold many strata properties throughout his career. Ian is a member of the Real Estate Board of Greater Vancouver and the Canadian Real Estate Association and is licensed with the Real Estate Council of British Columbia. Ian has been an MLS Medallion Club member for 19 years with the Real Estate Board of Greater Vancouver. From 2006 to 2008, Ian was a Vancouver Westside Division board member of the Real Estate Board of Greater Vancouver. From 2008 to the present, Ian has been an active member of the Government Relations Committee at the Real Estate Board of Greater Vancouver.

Tim Jowett started with the Vancouver land title office in 1988 and has progressed through the years from an examiner of title into his current position of senior manager, E-business and deputy registrar with the New Westminster land title office at the Land Title and Survey Authority of British Columbia.

Tim currently oversees the E-business team, a group of specialist examiners who are responsible for the published practices, statutory procedures and functionality related to the electronic filing system. The team's work involves various enhancements, changes, and updates to the systems and processes that are being done in an effort to support the needs of stakeholders.

His role also entails answering questions from a variety of stakeholders, primarily lawyers, notaries, land surveyors, and employees with local governments. Tim has presented and is a key participant at various meetings and conferences on land-title issues with these stakeholders.

Alex Longson (committee member July 2016–present) started his career in real estate in 2005, shortly after emigrating from the United Kingdom, where he had 20 years' experience in the automotive-engineering industry working as a test engineer for Ford Motor Company. He became licensed for strata management in 2006 with a brokerage in the Okanagan, and subsequently became licensed for rental management and as a managing broker in 2009. In 2012, he joined the staff of the Real Estate Council of British Columbia and in his role as senior compliance officer he investigates complaints, advises and educates licensees on the requirements of the legislation, and supports the real estate council's Strata Management Advisory Group. He has also been a guest speaker to the Strata Property Agents of British Columbia and the British Columbia Real Estate Association, and is currently a resource to the Real Estate Council of Alberta for the Condominium Managers Implementation Advisory Committee.

Judith Matheson (committee member October 2013–October 2016) started her career in real estate in 1980. She is currently a real-estate agent with Coldwell Banker Premier Realty. Judith has sold thousands of strata properties as resales, as well as having worked for many of the top strata developers in British Columbia. She is ranked in the top seven percent of realtors worldwide with Coldwell Banker, and is a Coldwell Banker Premier Realty Top Producer.

Judith is a member of the Real Estate Board of Greater Vancouver and the Canadian Real Estate Association, and is licensed with the Real Estate Council of British Columbia. She is an MLS Medallion Club Member, Real Estate Board of Greater Vancouver Quarter Century Club Member, and an Affiliate Member of LuxuryHomes.com. Judith has been awarded the Coldwell Banker Ultimate Service Award, the Coldwell Banker Presidents Circle, the Coldwell Banker Diamond Society, the Coldwell Banker Sterling Society, and the Coldwell Banker Top 50 in Western Canada.

Elaine McCormack is a founding member of the law firm Wilson McCormack Law Group. For over 20 years she has assisted strata corporations, individual owners, and management companies in the governance and dispute-resolution processes of strata life. She prepares bylaws and privacy policies, resolutions, and contracts. She has also represented clients in court and in human-rights matters.

Elaine is actively involved in educating members of the strata community. She frequently designs and delivers seminars for the Professional Association of Managing Agents and presently serves on the education committee of PAMA. She has written and delivered the latest full-day course entitled "Real Estate E & O Insurance Legal Update for Strata Managers" used for the Relicensing Education Program for strata managers. She also frequently delivers seminars for the Condominium Home Owners' Association of British Columbia and has written many articles for the CHOA

News. She is a past director of the British Columbia Arbitration and Mediation Institute (BCAMI) and currently sits on the accreditation committee of BCAMI for the QArb designation.

As a Charter Arbitrator, Elaine frequently adjudicates disputes and uses this experience in turn when advocating for clients before fellow arbitrators. She is a member of the MediateBC Civil Roster and has received mediation training through the British Columbia Justice Institute, the Continuing Legal Education Society of British Columbia, and MediateBC. Elaine has also been counsel in several seminal Supreme Court of British Columbia decisions involving such diverse strata issues as the enforcement and validity of age bylaws and rental bylaws, the transitional provisions between the *Condominium Act* and the *Strata Property Act* with respect to allocation of repair costs, and claiming damages for improperly calculated strata fees.

Elaine's degrees and designations include a BA with a major in English, minor in Law and the Liberal Arts from the University of Calgary in 1988, an LLB from the University of British Columbia, and a CARb designation from the ADR Institute of Canada Inc. in 1998.

Susan Mercer (committee member September 2016–present) started her career as a notary public in 1986 in Sidney, BC. During her years of practice, she specialized in real-estate transactions, which included many strata properties. As a result, she is very aware of various issues faced by strata-property owners, as well as by strata-property managers. She has also been involved in strata-property development.

Susan has served various community and professional boards and foundations. She also served on the BCLI Real Property Reform Project Committee from 2008–12.

In 1986, Susan received her certification as a notary public from the University of British Columbia. At that time, she became the first recipient of the annual Bernard Hoeter Award for highest marks achieved on the BC Notary statutory exams. She is also a graduate of the UBC Urban Land Economics Diploma Program (2002), receiving two bursaries recognizing her excellent marks upon completion of the program.

Doug Page (committee member October 2013–July 2014) is the manager of housing policy in the British Columbia government's Office of Housing and Construction Standards and is a former condo owner. British Columbia's strata legislation and regulations are now one of his main responsibilities. He has worked for 25 years in various aspects of the housing field, including stints with the Urban Institute in Washington, DC, the US Department of Housing and Urban Development, BC's Treasury Board staff, and with a large private developer and manager of apartment buildings. Doug has a BA from Dartmouth College and an MA in urban geography

and a diploma in urban land economics, both from the University of British Columbia. He is a member of the Real Estate Institute of British Columbia.

David Parkin is the assistant city surveyor for the City of Vancouver. He has been working in the land surveying profession for over 30 years in different capacities in Whistler and the Vancouver Lower Mainland. He obtained his Bachelor of Science in Surveying Engineering from the University of Calgary in 1992 and was commissioned as a British Columbia Land Surveyor in 1995. He is a practising member of the Association of British Columbia Land Surveyors.

David was employed by Underhill Geomatics Ltd. for 15 years and worked as a project land surveyor and was responsible for managing and supervising the day-to-day operations and projects of the Vancouver office. His preferred areas of practice while with Underhill's were larger development projects that included the preparation of air-space subdivisions and strata plans.

In his current capacity as the assistant city surveyor, David reviews conventional and air-space subdivision applications, subdivisions of existing strata plans and statutory right of way plans, and agreements related to commercial and residential developments.

Allen Regan is the vice president and managing broker for Bayside Property Services Ltd. He has been with Bayside since April 1999. Bayside provides management services to approximately 145 strata corporations throughout the lower mainland, as well as approximately 40 rental-apartment buildings. In total, Bayside manages about 12 000 strata and rental units. Prior to working at Bayside, Allen held positions in the commercial real-estate field with GWL Realty Advisors as regional director for British Columbia and with O & Y Enterprise as general manager for British Columbia. Allen has a B Comm from the University of British Columbia in urban land economics (1979) and is licensed in British Columbia for trading, rental, and strata management, all as a managing broker. Allen is also on the board of directors of the Strata Property Agents of British Columbia.

Garrett Robinson (committee member April 2017–present) started his career in real-estate sales in 1993. He is currently a realtor with Re/Max Crest Realty Westside in Vancouver. Garrett is a member of the Real Estate Board of Greater Vancouver and the Canadian Real Estate Association and is licensed with the Real Estate Council of British Columbia. Garrett has previously been a subcommittee member of the 2009 *Strata Property Act* Review that was headed by Adrienne Murray. Garrett has been an MLS Medallion Club member for 18 years with the Real Estate Board of Greater Vancouver. Garrett is a past director (three terms) for the Vancouver

Westside Division of the Real Estate Board of Greater Vancouver. Garrett is a strata-property owner and active in day-to-day strata-council activity.

Stan Rule (committee member October 2013–September 2016) is a partner at the Kelowna law firm of Sabey Rule LLP. He has been practicing in Kelowna since shortly after he was called to the bar in 1989. His preferred areas of practice are wills, trusts, estates, and estate litigation.

Stan writes a legal blog entitled “Rule of Law.” He has been a guest speaker at the Trial Lawyers Association of British Columbia, the Canadian Bar Association Okanagan wills and trusts and the Victoria wills and trusts subsections, the Okanagan family law subsection, the Kelowna Estate Planning Society, the Vernon Estate Planning Society, and he has presented papers at eight continuing legal education courses.

Stan is a director of the British Columbia Law Institute. He is the treasurer of the national wills and estates subsection of the Canadian Bar Association. He is a member and former chair of the Okanagan wills and trusts subsection, and a member and a former president of the Kelowna Estate Planning Society. He is also a member of the Society of Trust and Estate Practitioners. He recently participated as a member of the British Columbia Law Institute Project Committee on Recommended Practices for Wills Practitioners Relating to Potential Undue Influence.

Sandy Wagner represents strata owners in many areas of public concern as president of the board of directors of the Vancouver Island Strata Owners Association. VISOA’s mandate is education, empowerment, and assistance for British Columbia strata owners, and has provided front-line service to them for 45 years.

She has been a director of VISOA since 2007 and has led the association as president for the past seven years, during which time it has grown significantly both in membership and in visibility. Sandy currently edits the VISOA Bulletin, a quarterly newsmagazine distributed to nearly 10 000 VISOA members, and leads VISOA’s workshop group, providing educational full-day workshops on strata best practices. She is also part of the Civil Resolution Tribunal staff.

Previously, Sandy was a member of the Civil Resolution Tribunal Working Group (a committee working on procedural matters for the CRT) and a volunteer on the Strata Management Advisory Group (working with the Real Estate Council of British Columbia to provide education and information for strata managers).

Ed Wilson is a partner with the Vancouver law firm Lawson Lundell LLP and has practiced in the real-estate and municipal-law fields, with a specialty in real-estate development, for over 30 years. Ed was a member of the Canadian Bar Association’s

strata property committee that worked with government in developing the current *Strata Property Act*. Ed has been actively involved with the Continuing Legal Education Society of British Columbia. He has taught more than 15 CLEBC courses, including courses on strata-property law, resort development, real-estate development, and depreciation reports for strata corporations. Ed is also a member of the Urban Development Institute's legal issues committee.

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- Condominium Home Owners Association
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