



# BRITISH COLUMBIA LAW INSTITUTE

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BRITISH COLUMBIA  
LAW INSTITUTE

## STRATA PROPERTY LAW PROJECT—PHASE TWO

### Backgrounder

## Introduction to the Strata Property Law Project—Phase Two

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### INTRODUCTION

The British Columbia Law Institute has begun work on Phase Two of the Strata Property Law Project. This project will build on the Strata Property Law Project—Phase One, which was completed in 2012. The phase-two project will consider options for reform of the issues identified in the consultation for the phase-one project and will deliver public consultations, final recommendations for reform, and draft legislation. The project will address pressing issues in seven areas of strata-property law, with a view to assisting in the development of the next generation of strata-property legislation in British Columbia.

### OUR SUPPORTERS

The Strata Property Law—Phase Two Project is made possible by project funding from the Real Estate Foundation of British Columbia, the Notary Foundation of British Columbia, the Ministry of Natural Gas Development and Responsible for Housing for British Columbia, Strata Property Agents of British Columbia, the Real Estate Council of British Columbia, the Real Estate Institute of British Columbia, the Association of British Columbia Land Surveyors, and the Vancouver Island Strata Owners Association.

### STRATA PROPERTY LAW (PHASE TWO) PROJECT COMMITTEE

The British Columbia Law Institute is carrying out the Strata Property Law—Phase Two Project with the assistance of an all-volunteer project committee. The project committee brings together a diverse range of experts from across the strata-property field to consider options for reform of the *Strata Property Act*.

The members of the Strata Property Law (Phase Two) Project Committee are:

Patrick Williams—Chair  
*Clark Wilson LLP*

Larry Buttress  
*Real Estate Council of British Columbia*

Garth Cambrey  
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Doug Page  
*BC Ministry Responsible for Housing*

Allen Regan  
*Bayside Property Services Ltd.*

Sandy Wagner  
*Vancouver Island Strata Owners Association*

Kevin Zakreski (staff lawyer, British Columbia Law Institute) is the project manager.

## **BACKGROUND ON THE STRATA PROPERTY ACT**

Strata properties have two essential elements: (1) the division of a property into units (which are individually owned) and common elements (which are collectively owned by the unit owners); and (2) a system of democratic governance that allows the owners to manage the property collectively.

Strata properties are creatures of statute. Legislation sets up the framework for the elements of strata properties. British Columbia has had three generations of strata-property legislation.

In 1966, British Columbia enacted its first strata-property statute, the *Strata Titles Act*. This skeletal act created a basic legal framework for strata properties. Its main purpose was to provide certainty and security for purchasers and lenders in dealing with a novel type of development.

In 1974, British Columbia passed a new *Strata Titles Act*. This 1974 act built on the foundation of the 1966 act. It carried forward, and often enhanced, the 1966 act's rudimentary provisions on land titles, governance, and other basic issues. In an indication of the increasing complexity of strata-property developments, the 1974 act introduced new procedures for phased strata developments and leasehold strata plans.

In 1998, the *Strata Property Act* replaced the 1974 act. Like its predecessor, the *Strata Property Act* built on the foundations of earlier acts. The *Strata Property Act* also achieved its stated goals of reorganizing the legislation along plain-language lines, enhancing consumer protection, and creating greater flexibility. In addition, the act has an array of sophisticated provisions on complex operational issues.

The *Strata Property Act* remains the governing legislation for strata properties in British Columbia. The act has been amended a number of times on a small to medium scale, with the most recent amendments coming in 2009.

In 2012, the BCLI carried out Phase One of the Strata Property Project. Through preliminary research and consultation with experts, the BCLI determined that there were a number of strata-property issues that should be the subject of a phase-two law-reform project.

## THE LEGAL ISSUES TAKEN UP IN THE PROJECT

The Strata Property Law—Phase Two Project will examine the following issues.

- **Fundamental changes.** This category is meant to capture major, transformative changes to a strata property. The main characteristics of a fundamental change are a requirement for unanimous (or very high majority) approval of strata-lot owners and a court-based process for cases in which that approval cannot be attained but proceeding with the change is in the best interests of the strata property. The clearest example of a fundamental change is the cancellation of a strata plan and the winding up of a strata corporation. There are concerns, given the aging of first-generation strata properties, that this procedure will need to be invoked more frequently in the future. Other topics, such as amending a strata plan and amalgamation of strata corporations, may also be considered as part of this subject.
- **Complex stratas.** “Complex strata” is another category devised to embrace a number of areas in strata-property law. The category is primarily concerned with problems associated with mixed-use stratas. Mixed-use stratas are becoming increasingly prevalent in British Columbia. Some of these strata properties have sections or types. Legislation (and regulations) on sections and types is not as clear as it can be. This has led to numerous operational problems. Another area of concern involves phased strata plans. A thorough review of the legislative framework for complex stratas is needed.
- **Leasehold stratas.** In a leasehold strata, the land is subject to a ground lease. The occupants of each strata lot are tenants. The landlord of a leasehold strata must be a legislatively identified public authority. The list of bodies that qualify as public authorities is rather short. Expanding opportunities to create leasehold stratas could contribute positively to housing affordability in British Columbia. There are also a number of operational issues for leasehold stratas are worthy of further consideration.
- **Common property.** Common property is one of the fundamental building blocks of the strata concept, but some basic questions about its nature remain difficult to answer. The phase-two project will examine some of these basic questions, such as who should own common property and where should it begin and end. They also recommended examining rules on converting strata lots to common property, and *vice versa*.

- **Governance issues.** Governance is a perennial issue for strata properties. Successful strata-property governance requires careful balancing of the rights and obligations of individual strata-lot owners with the interests of the majority of owners in the development.
- **Insurance issues.** Difficult issues can be created when one well-developed body of law intersects with another. Some examples of these issues can be found in the last two items on this list. The first item proposes examining how selected insurance-law issues affect strata properties. There are several discrete areas where the legislation may be in need of fine-tuning.
- **Land-title issues.** Finally, there are a number of discrete issues concerning the intersection of strata-property and land-title law that the phase-two project will examine. These issues relate to concerns about subdivision control and strata properties and air-space parcels.

## PROJECT TIMELINE

Work on the project began in fall 2013. The project will continue until December 2016. During that time, the project is expected to pass through several distinct parts.

The committee has decided to give priority to examining issues connected with cancellation of a strata plan and winding up of a strata corporation. The plan is to issue a consultation paper in late spring 2014 and a final report later in 2014. Other fundamental changes connected with this topic may also be considered in these publications.

Research into and examination of the remaining issues in this project will carry on through 2014–15. A consultation paper on these issues is projected for publication in spring 2016, with publication of the project's final report planned for December 2016.

## ABOUT THE BRITISH COLUMBIA LAW INSTITUTE

The British Columbia Law Institute was incorporated in 1997 under the British Columbia *Society Act*. Its mission is to be a leader in law reform by carrying out the best in scholarly law-reform research and writing and the best in outreach relating to law reform.

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