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STRATA PROPERTY LAW PROJECT—PHASE TWO

Backgrounder Consultation Paper on Governance Issues for Stratas

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Introduction

This is the third consultation paper 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 consultation papers have considered terminating a strata and complex stratas.

This consultation paper examines selected governance issues. These are issues concerning the method or system of a strata corporation's management. The hallmark of governance is effective decision-making. Strata-corporation governance entails coordinating a diverse range of individual strata-lot owners to make effective decisions on matters of common concern. This consultation paper's focus is on how the *Strata Property Act* and the *Strata Property Regulation* enable that process through provisions on bylaws and rules, statutory definitions, general meetings and strata-council meetings, finances, and notices and communications.

The consultation paper contains 83 proposals for reform of the *Strata Property Act* and the *Strata Property Regulation*. Readers may give their views on these proposals by a variety of means—filling out all or part of a response booklet, sending a letter to BCLI, or completing an online survey. BCLI will consider reader responses in crafting its final recommendations for reform. For a response to be considered in this process, BCLI must receive it by **15 June 2018**.

Summary and full consultations

There are two versions of the consultation paper available for public comment.

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A summary consultation sets out highlights from the full slate of proposals made on strata governance. It contains little in the way of background information and no citation of sources. The summary consultation is located at appendix B to the consultation paper. A freestanding copy may be downloaded from <https://www.bcli.org>.

The full consultation paper contains all 83 proposals made on reforming strata governance. It also provides the detailed research that was relied on in making those proposals.

The remainder of this executive summary describes only the full consultation.

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.

Content of the consultation paper

Overview

The consultation paper contains eight chapters. The introductory chapter gives an overview of the project and the consultation process. The second chapter provides a summary of the building blocks of strata governance. The consultation paper ends with a brief concluding chapter.

The remaining five chapters form the bulk of the consultation paper. They each tackle the broad areas of the law that have generated issues for reform. Since strata governance is a vast topic, one of the first decisions taken by the committee was to identify a range of areas that contained the issues most in need of consideration by a law-reform body. In the committee's view, these areas are:

- bylaws and rules;
- statutory definitions;
- general meetings and strata-council meetings;
- finances; and

- notices and communications.

Each of these areas forms the subject of a dedicated chapter.

Bylaws and rules

This is the consultation paper's longest chapter, containing 38 tentative recommendations for reform. The chapter opens with a brief discussion of the current law on bylaws and rules. Then it moves into a consideration of each of the sections currently found in the Schedule of Standard Bylaws to the *Strata Property Act*. The goal of this review is to consider whether any of the bylaws should be relocated from the schedule to the main body of the act. The effect of such a move is that it would place the text of the (former) bylaw beyond the reach of amendment by the strata corporation. In the committee's view, 11 standard bylaws (or parts of a standard bylaw) should be given this treatment.

The remainder of this chapter examines the tools strata corporations have under the act to enforce their bylaws. The committee considers—but ultimately doesn't tentatively recommend—expanding the reach of the strata corporation's lien to encompass defaults in the payment of fines. The committee also looks at and doesn't endorse the creation of a new statutory penalty or offence provision applicable to a contravention of a bylaw or rule. Finally, the committee does propose a new statutory provision aimed at bylaws that adopt the rule in *Clayton's Case* to reassign money intended for the purposes of strata fees, special levies, reimbursement of the cost of work done under a failure to comply with a work order, or a strata lot's share of a judgment.

Statutory definitions

This short chapter examines the addition of specific statutory definitions to the *Strata Property Act*, as a way to clarify important concepts or to aid a strata corporation in the administration of its obligations under the act. In the committee's view, the terms *continuing contravention* and *rent* should be defined in the legislation. The committee also considered, but didn't endorse, proposed definitions of *strata manager*, *residential strata lot*, and *nonresidential strata lot*.

General meetings and strata-council meetings

The chapter on general meetings and strata-council meetings is another lengthy chapter, containing 21 tentative recommendations. It focusses on the following subjects:

- proxies;
- conduct of meetings;
- quorum;
- voting;
- strata-council elections; and

- agenda and meeting minutes.

The committee is particularly interested in comments on proxies, which have proved to be a fraught issue in strata-corporation governance. On this topic, the committee tentatively recommends that a mandatory, standard form of proxy appointment come into use in British Columbia. The committee also gives extended consideration to limiting the number of proxy appointments that one person may hold for a general meeting, ultimately deciding not to propose a limit.

The chapter also contains tentative recommendations clarifying that election to the strata council entails commanding a majority of the ballots cast, setting out that quorum for a general meeting must only be present at the start of the meeting, establishing statutory qualifications for council members modelled on the provisions of the new *Societies Act*, and clarifying the order of agenda items for annual and special general meetings.

Finances

While this chapter doesn't present a comprehensive survey of all the financial issues that affect a strata corporation, it does examine some fundamental issues and make 13 tentative recommendations concerning them. The committee largely confirms that the existing framework for a strata corporation's operating fund, budgets, and financial statements should remain as is. The committee does tentatively recommend updating a number of regulatory provisions concerning the maximum amounts of fines and fees.

The chapter concludes with an examination of a pressing issue for collection of money owing to the strata corporation—the application of a two-year limitation period to strata-corporation claims. The committee tentatively recommends creating a special limitation period for claims that may be the subject of the strata corporation's lien under section 116 of the act, which would be set at four years.

Notices and communications

This brief chapter examines a handful of anomalous notice provisions and periods and recommends some updates in light of practice issues.

Conclusion

The committee encourages responses to its proposals. Comments from readers will be fully considered by the committee, as they play an important part in the process of crafting this project's final recommendations. Those final recommendations will be submitted to the provincial government. The province of British Columbia regularly updates strata legislation.