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BRITISH COLUMBIA

LAW INSTITUTE STRATA PROPERTY LAW PROJECT—PHASE TWO

## Backgrounder

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

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### 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.

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## **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.