

## Contracts Relating to Alterations to a Strata Lot or Common Property

Owners are frequently requesting permission to alter their strata lot or the common property. Alterations can range from installing skylights, closing in decks, to opening the attic in order to create another room. The standard bylaws of the *Strata Property Act* require the owner to obtain the written permission of the Strata Corporation before commencing the alteration; however, not all alterations may be of a type that require the permission of the Strata Corporation. Each owner must look to the bylaws to know what alterations require permission before they can be undertaken. Under the standard bylaws of the *Strata Property Act* an owner must obtain permission before altering the structure or exterior of the building, and things on or attached to the exterior of the building such as doors or windows and stairs or balconies. Permission must also be obtained to alter patio or deck enclosures such as fences or railings. Additionally, the standard bylaws require that an owner obtain approval before altering fixtures such as floor and wall coverings and electrical and plumbing fixtures built or installed by the owner developer as part of the original construction. A Strata Council may find that the provisions in the standard bylaws do not meet the needs of the Strata Corporation. Amend your standard bylaws regarding alterations to ensure that the bylaw reflects the particular needs and concerns of the owners and your specific type of building.

The standard bylaws do not specify what constitutes an "alteration" in relation to common property, including limited common property. In order to prevent disagreements regarding what alterations on common property require the approval of the Strata Corporation, your Strata Council may also consider amending the bylaw relating to alterations on common property to set out what alterations require approval.

The standard bylaws permit the Strata Corporation to require the owner wishing to make the alteration to

agree in writing to take responsibility for any expenses related to the alteration.

### **When presented with a request for an alteration what are the next steps?**

Before agreeing to any alteration, the Strata Council should obtain all the information necessary regarding the proposed alteration. Confirm exactly what alteration is being proposed. If necessary, an architectural drawing may be required so that the Strata Council has an idea of the visual impact of the alteration. Whether a professional engineering study is required must also be determined before a decision is made to permit certain alterations such as balcony enclosures, and other alterations that affect load bearing walls of the building, and determine whether any permits must be obtained before the work is carried out. Consider whether the proposed alteration affects any other owner's ability to use and enjoy their strata lot or the common property.

The Strata Council may also want information such as the colour and quality of materials to be used, whether a skilled contractor will be carrying out the work, and if so, particulars regarding the contractor's insurance coverage and WCB registration, how long the alteration is expected to take, whether during the construction of the alteration any other owner's use of their strata lot or the common property will be disrupted, for example, by the contractors depositing debris on the common property lawn until the work is completed. The Strata Council should also consider who would be responsible for any damage caused during the construction, and whether anything that is being done could raise a safety concern for the other owners, occupants or guests of the residents.

The next issue for the Strata Council to consider is whether the owner should be liable for the future repair and maintenance related to the alteration.

Once these matters have been considered, and the Strata Council has determined that the alteration is appropriate, the parties may then enter into an agreement setting out the fact that the owner has agreed to take responsibility for the expenses relating to the alteration. Under the standard bylaws this agreement must be in writing.

Agreements relating to alterations should contain at least the following terms:

1. The name of the owners of the strata lot. A Strata Council will want to contract with the owner of the unit. Often times, the strata lot may be in the name of a parent, child, or only in the name of one spouse. It may therefore be necessary to search the title to the strata lot to confirm the owner.
2. A description of the alteration. The description should include the material specifications and should attach the architectural drawing, if one was provided.
3. Any professional inspection or supervision of the work that the Strata Council has required. The Strata Council may wish to require an engineer, or some other professional to inspect the work and certify that it meets the necessary codes or standards.
4. That all work will be done in accordance with the relevant codes and regulations and that all building permits and certificates will be provided to the Strata Council.
5. The permit numbers on all permits that are required to be obtained.
6. The names, addresses and contact numbers for the contractors including their WCB number, insurance agent and policy number.
7. That the owner will amend their Home Owner's Insurance Policy to increase the Betterment and Improvement coverage to include the alteration and that a copy of the policy will be provided.
8. That the owner agrees to be liable for all expenses related to the alteration and will maintain and repair the alteration, including costs of legal services, professional consulting, environmental abatement and any related penalties resulting from environmental infractions. Even owners conducting renovations or alterations to their strata lot are subject to WorkSafe Regulations and protocols for asbestos, mould and lead paint. If an owner undertakes renovations, confirm there are no environmental issues that have to be addressed and include a clause in your agreement with the owner that in the event there are any environmental costs or penalties they will be responsible, if the result was caused by their renovation.
9. That the owner agrees to waive the liability of the Strata Corporation, Strata Council and individual owners for any injury or financial loss resulting from the installation or operation /use of the alteration and for any liability and responsibility for the repair and maintenance of the alteration.
10. That the owner will notify all prospective purchasers that the alteration is the owner's improvement and that the repair and maintenance of the alteration is the responsibility of the new owner.

When presented with a request for an alteration, a Strata Council should take the time necessary to obtain enough factual information to make an informed decision. The members of the Strata Council should also take enough time to ensure that the contract that is drawn up reflects all the relevant terms to ensure that both parties understand the arrangement during the construction period and in the future.

CHOA recommends a strata corporation consult with a lawyer before completing alteration agreements which may impact the use, enjoyment or appearance of common property, or any alteration that may affect the structure or safety of a building.

**“Checklist – for Council Use”**

Before you proceed, collect all of the necessary information and confirm that the applicant is authorized to perform the alteration and the details of the proposed changes.

Strata Plan # \_\_\_\_\_

Strata Lot number: \_\_\_\_\_ Date: \_\_\_\_\_

Name of Applicant: \_\_\_\_\_

Signature: \_\_\_\_\_

List type of alteration to:

Strata Lot \_\_\_\_\_ Common Property \_\_\_\_\_

Limited Common Property \_\_\_\_\_

List all details of the proposed alteration:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Identify any costs related to the alteration and who is responsible for the current and future costs associated with replacement, renewals, maintenance, repairs, damages, environmental and waste management:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Are building permits/engineering services required for the alteration? \_\_\_\_\_

If yes list in detail:

Plumbing: \_\_\_\_\_

Electrical: \_\_\_\_\_

Structural: \_\_\_\_\_

Will any construction result in the removal or alteration to any materials that may require environmental abatement:

Asbestos: \_\_\_\_\_ Mould: \_\_\_\_\_

Lead Paint: \_\_\_\_\_ Fuel tanks: \_\_\_\_\_

Protective barriers that control Radon or Moisture: \_\_\_\_\_

Is the alteration possibly a significant change in the use or appearance of common property or a common asset? If yes, have arrangements been made for a Special General Meeting and ¾ vote resolution to be approved by the owners? \_\_\_\_\_

Are there any conditions that require legal services for review of the agreements, construction or resolutions to be approved by the owners at a General Meeting by ¾ vote? \_\_\_\_\_ If yes, who pays the cost? \_\_\_\_\_

Has the strata council/corporation approved the alteration in writing?  
 Yes  No Date: \_\_\_\_\_

Has the approval been documented in the minutes of the strata council meetings? \_\_\_\_\_

Response of Strata Council:

Approved: \_\_\_\_\_

Approved subject to conditions: \_\_\_\_\_

Additional information is required before consideration: \_\_\_\_\_

Details of additional information required: \_\_\_\_\_

Request Declined: Identify the reasons and decision of council and retain information in the event the strata corporation is challenged for not approving the request.