
Have Your Say in BCLI Consultation on Sections, Types, and Phases

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The British Columbia Law Institute is in the midst of a large project examining aspects of the *Strata Property Act*. The Strata Property Law Project—Phase Two is being carried out with the support of nine funders and a volunteer project committee.

This fall, the committee published its *Consultation Paper on Complex Stratas*. This consultation paper gives everyone the opportunity to consider and comment on 68 proposals to reform the *Strata Property Act* and the *Strata Property Regulation* to address legal issues arising from sections, types, and phases.

The words “complex stratas” describe trends in the real-estate sector that have grown steadily since stratas first appeared in the 1960s. Strata properties were encouraged to come on the scene as a way to promote high-density residential housing. But nothing prevented developers from using stratas for other purposes. Two trends have especially boosted the complexity of the strata form.

The first trend is increasing architectural variety. Stratas may incorporate a number of building styles. For example, a single strata may contain an apartment tower surrounded by townhouses and other low-rise buildings. These large-scale, sophisticated stratas have the economic power to afford many amenities.

The second trend is combining uses in a strata property. Mixed-use stratas contain strata lots that are being used for two or more purposes. For example, a mixed-use strata may have retail and commercial uses on its lower floors and residential strata lots up above.

These complex stratas have many benefits. They create variety in the marketplace. They support amenities that owners enjoy. And they advance urban-planning goals.

So since the 1970s the *Strata Property Act* has had a number of tools that encourage the development and sustain the administration of complex stratas. Three of these tools are the focus of BCLI’s consultation paper: sections, types, and phases.

Phases permit the development of a strata property in segments over an extended time. It’s expensive to develop a large, sophisticated strata property. Only deep-pocketed developers could do it all in one go. A phased development opens up cash flow from the early phases to fund the completion of the later phases. Phasing expands pool of developers that are able to create complex stratas.

While phases address the initial development of a complex strata, sections and types are aimed at the administration of a complex strata that is up and running. Sections and types allow a strata corporation to manage cost sharing between groups of owners. Stratas that feature different uses or varying architectural styles are more likely to have common expenses for goods or services that only benefit one group of owners. Sections and types permit the strata corporation to allocate such expenses to the group that exclusively benefits from them.

For example, a complex strata may consist of townhouses and an apartment tower. The tower’s elevator clearly only benefits apartment residents. This strata could designate strata lots in the tower as a type of strata lot and allocate the operating costs for the elevator to them. Or it could go even further and create an apartment section. A section is essentially a mini strata corporation. It can fund and pay for both operating expenses and capital upgrades.

The law on sections, types, and phases was largely created in the 1970s. While it has brought some benefits, it also appears to have caused some problems. Using sections, types, and phases can make a strata more complicated to operate and administer. Some people have difficulty grasping and applying the governing law, resulting in frustration, lost time, and wasted money.

The committee is the first law-reform group since the 1970s to examine these three aspects of the *Strata Property Act* in comprehensive detail. It grappled with whether bold reforms are needed. Should sections be done away with? Should types be given a greatly expanded role? Do phases need a completely different oversight framework?

In the end, the committee didn't propose any radical changes. But it does see a pressing need for a host of smaller-scale changes, to ensure that the law continues to operate at its best.

The consultation paper's 68 tentative recommendations for reform feature:

- 29 tentative recommendations on sections, which propose clarifying the procedures for creating and cancelling sections, spelling out section powers and duties, and strengthening section governance, budgets, and finances;
- 14 tentative recommendations on types, which propose clarifying the procedures for creating and cancelling types and fine-tuning the operation of types; and
- 25 tentative recommendations on phases, which propose enhancing the oversight of the phasing process, simplifying governance in a phased strata corporation, and providing additional protections for the financial interests of owners in a phased strata property.

The consultation runs until 15 January 2017. The consultation paper, summaries, and information on submitting a response are all available at <http://www.bcli.org>.