



Reforming The Strata Property Act

Publication / Date: The CHOA Journal Spring 2019

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Introduction

Since 2013, British Columbia's independent law-reform organization, the British Columbia Law Institute, has been carrying out a project to reform the *Strata Property Act*. The Strata Property Law Project—Phase Two builds on the initial consultation, research, and issue identification done in 2012 as phase one of this project. The phase-two project aims to recommend reforms that will improve the *Strata Property Act* and usher in a new generation of strata-property law in British Columbia.

As an important part of the phase-two project, BCLI has the great benefit of assistance from an expert project committee. This project committee includes members from the legal, notarial, strata-management, and land-surveyor professions, as well as representatives from owners' organizations and sector regulators. The project has been made possible by support from nine funding organizations: 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, the 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 has already published two reports earlier in the project: the *Report on Terminating a Strata* (which was implemented by legislation passed in 2015) and the *Report on Complex Stratas* (which was a comprehensive survey of legal issues for sections, types, and phases). The project is winding down in 2019, and two more reports have been published in the early months of this year.

Report on Governance Issues for Stratas

In January 2019 BCLI published the *Report on Governance Issues for Stratas*. This report is the culmination of the project committee's work on the wide-ranging and high-profile subject of strata-corporation governance. It encompasses discussions held at 23 committee meetings and consideration of the results of a three-month public consultation, which received 290 submissions. The report contains 81 recommendations for reform of the *Strata Property Act*, the *Strata Property Regulation*, and the Schedule of Standard Bylaws.

At its core, governance concerns how organizations make timely and effective decisions. Under the *Strata Property Act*, a corporate framework is created to govern collective decision-making by strata-lot owners. The *Report on Governance Issues for Stratas* examines the trappings of this corporate governance framework in five areas: (1) bylaws and rules; (2) statutory definitions; (3) general meetings and strata-council meetings; (4) finances; and (5) notices and communications.

The committee recommended that 12 standard bylaws should be relocated from the act's Schedule of Standard Bylaws to the body of the *Strata Property Act*. These recommendations will reset the balance between provisions that should apply generally to strata corporations and should therefore be beyond the reach of amendment by a strata corporation (such as those on strata corporation's duty to repair and maintain property) and provisions that should allow for flexible variation among strata corporations (such as those relating to meeting procedure).

The committee also recommended that the reach of the strata corporation's lien, which is one of its key enforcement tools, be extended to embrace amounts owing to the strata corporation on a charge back for an insurance deductible or expenses incurred due to damage which are less than an insurance deductible, if the charge back has been found to be valid by a court, an arbitrator, or the Civil Resolution Tribunal. This recommendation is intended to support recommendations in the committee's *Report on Insurance Issues for Stratas*. (There's more about this report later in this article.)

The committee examined a range of new definitions for the *Strata Property Act*. To clarify concerns that have arisen in practice, the committee decided to recommend adding to the act definitions of "continuing contravention" and "rent."

Well-functioning meetings are a prerequisite to good governance, so the committee paid a good deal of attention in the report to general meetings and strata-council meetings. The report makes 20 recommendations on this topic.

These recommendations range from requiring proxy appointments to be made using a prescribed standard form to providing that election to strata council entails commanding a majority of the ballots cast and clarifying the order of agenda items for annual and special general meetings. The committee also recommended that the *Strata Property Act* establish statutory criteria for serving as a council member. The recommended criteria are modelled on similar criteria for society directors, which establish a minimum age for serving in office and prevent undischarged bankrupts and people convicted of specified corporate offences involving fraud from serving.

The committee examined the act's major provisions on budgets and special levies and decided, apart from some small-scale changes to address practice issues, that they should be left as is. In a significant change, the committee does recommend the creation of a special limitation period for claims that may be the subject of a strata corporation's lien, which would be set at four years. This reform would set these claims apart from the general limitation period of two years. The longer

limitation period is justified, in the committee's view, by the special nature of amounts owing to strata corporation, which are distinct from most types of creditor-debtor claims. If a strata-lot owner fails to pay these claims, then ultimately it will fall to other owners to pick up the slack.

The committee also recommended updating a number of regulatory provisions concerning the maximum amount of fines and fees, which would be the first time these provisions have been updated in close to 20 years.

Finally, the committee recommended updating a score of anomalous notice provisions and periods to better align with current practices.

Report on Insurance Issues for Stratas

In March 2019 BCLI published the committee's *Report on Insurance Issues for Stratas*. This report contains a systematic review of part 9 of the *Strata Property Act*. It makes 11 recommendations for reform of part 9, the *Strata Property Regulation*, and the Schedule of Standard Bylaws, which are designed to enhance the legal framework governing insurance issues in a strata.

Currently, a strata corporation is required to maintain property insurance and liability insurance. The committee recommended expanding this insurance mandate to include directors-and-officers insurance coverage for strata-council members. This reform will enshrine a widely held best practice in the act. It will also remove what can, in some cases, be a disincentive for people to serve on council. Finally, this reform will enhance protections for strata-council members and for strata corporations generally, which could find themselves on the hook for an uncovered claim against a council member.

The committee also tackled the vexing issue of responsibility for a strata corporation's insurance deductible, when a claim is made due to damage a strata-lot owner is responsible for. The current law on this issue has proved to be confusing. It has also led to a score of disputes in the courts and the Civil Resolution Tribunal. The committee recommended making it clear that a strata corporation may charge back to an owner, if the owner is responsible for loss or damage that gives

rise to a claim under the strata corporation's insurance policy, the lesser of two amounts: (1) the cost of remedying the loss or damage; or (2) the deductible limit under the policy.

In preparing the report, the committee was acutely aware that some insurance deductibles—notably those for damage due to escape of water—have risen sharply in recent years. An owner facing liability in a water-damage case could be overwhelmed by the amount owing. To address this concern, the committee recommended creating a requirement that strata-lot owners have their own coverage for a strata corporation's insurance deductible. Many owners already do have this coverage, so this recommendation largely amounts to codifying a best practice. Still, enforcement of such a mandate among the score of owners who don't have this coverage is always a concern, and for this reason the committee recommended creating the mandate in the standard bylaws. This approach will give strata corporations access to the regular enforcement tools for contravention of a bylaw, such as fines. It will also give strata corporations the flexibility to opt out of the requirement, if they so choose.

The committee recommended enhancements to the act's provisions on reporting and administration. Specifically, it recommended that the act require strata corporations to obtain appraisals of their property, at a frequency to be set by regulation. The committee recommended that this regulation initially require appraisals at least every three years. Finally, the committee recommended that strata corporations be required to notify owners and tenants whenever there is a material change in the strata corporation's insurance coverage.

A look ahead

At the end of February, the committee wrapped up its final public consultation for the project, which asked the public to comment on proposals to reform legislation dealing with common property, land-title issues, and fundamental changes for stratas. The committee plans to take some time to consider the responses it has received. It expects to issue its final report for this project, the *Report on Common Property, Land Titles, and Fundamental Changes for Stratas*, in late spring

2019. To track the committee's progress on this topic, and to download your own copies of the committee's published reports, please visit <https://www.bcli.org>.