

Condominium Home Owners Association

A non-profit association serving strata owners since 1976

Bulletin: 200-013

Headline: **Repair and Maintenance to Common Property**

Publication date: Winter 2002

Publication: CHOA Journal

Written by: Elaine McCormack, Lawyer with McCormack & Company Law Corporation

Is it practical and legal to make individual owners responsible to repair and maintain common property? Strata council members frequently ask this question when they are considering revisions to the strata corporation's bylaws. The following is a discussion about the legal and practical considerations involved when deciding whether or not to make an owner responsible to repair and maintain common property.

Often times, as a cost savings measure, strata councils propose bylaws making owners responsible to repair and maintain common property. For instance, instead of paying for a built in sprinkler system, some strata corporations create bylaws making owners responsible to water the landscaping that surrounds their strata lot. Other strata corporations, concerned about the cost of replacing hundreds of windows with broken seals, create bylaws providing that individual owners can upgrade their windows at their own cost.

Leaving aside the legal question of whether or not an owner can be made responsible to repair and maintain common property, on a practical level it may not always be desirable to do so. Certainly, strata corporations should control the quality and timing of repairs that affect crucial building systems, such as the building envelope. For instance, sometimes owners are responsible to repair and maintain the balconies adjacent to their strata lots. If the balconies are not repaired and maintained properly, this may affect the building envelope. However, sometimes it can be very difficult to tell whether a problem arose with the balcony or with some other part of the building envelope. If an owner fails to properly maintain and repair a balcony, further damage to the building may result and eventually the strata corporation may incur a very large repair bill. Also, it may be very difficult for a strata corporation to successfully claim damages against a developer for negligence unless the strata council has knowledge of who else has worked on the building and unless this additional work has been done to an acceptable standard. Consideration must be given as to whether or not the work done by owners will affect any warranty that the strata corporation has on the building.

Especially in older strata corporations, patios and balconies are often included as part of the strata lot. Ordinarily, individual owners are responsible to maintain and repair their strata lot, including patios and balconies contained in the strata lot. Strata council members of these strata corporations may want to consider, for the reasons set out above, creating a bylaw that gives the strata corporation the responsibility for some of the repair and maintenance to these patios and balconies.

On October 11, 2001 section 72(2)(b) of the Strata Property Act came into force and effect and several changes were made to the Regulations. Section 72(2)(b) of the Strata Property Act originally provides that:

The strata corporation may, by bylaw, make an owner responsible for the repair and maintenance of ...
(b) common property other than limited common property only if identified in the regulations and subject to prescribed restrictions.

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The Regulations to the Strata Property Act are currently silent regarding section 72(2)(b). However, section 292(2)(j) of the *Strata Property Act* allows the Lieutenant Governor to make regulations identifying common property the repair and maintenance of which may be made the responsibility of an owner under section 72(2).

As a result, it is still unclear under what circumstances an owner can be made responsible to repair and maintain common property that has not been designated as limited common property. Section 5 of the Standard Schedule of Bylaws to the *Strata Property Act* deals with alterations to a strata lot. These alterations may involve alterations to the structure of a building and/or the exterior of the building, in other words, they may involve alterations to the common property. Although the strata corporation must not unreasonably withhold its approval for such an alteration under this section, the strata corporation may require as a condition of its approval that the owner agree, in writing, to take responsibility for any expenses relating to the alteration. This section lends support to the proposition that an owner can be made responsible to repair and maintain common property in certain instances.

One way of ensuring that an owner can be made responsible to repair and maintain common property is to designate the common property as limited common property. This works well in certain circumstances. For instance, the landscaped area around a strata lot can be designated as limited common property, but the designation is not designed to be used for features such as windows.

Another way of dealing with the issue is for the strata corporation to impose user fees for the use of common property or common assets. Under section 110 of the *Strata Property Act* and section 6.9 of the Regulations, strata corporations may impose user fees for the use of common property or common assets if the amount of the fee is reasonable and the fee is set out in a bylaw or alternatively in a rule that has been ratified.

The issue of an owner being made responsible to repair and maintain common property is dealt with in the Standard Schedule of Bylaws to the *Strata Property Act* (“Standard Bylaws”). Under the Standard Bylaws, the strata corporation is responsible to repair and maintain the common property, with a few exceptions. The strata corporation is also responsible for the repair and maintenance of limited common property that, in the ordinary course of events, occurs less often than once a year. Individual owners are responsible to repair and maintain limited common property that occurs, in the ordinary course of events, once a year or more. In my opinion, British Columbia Judges are likely to hold owners responsible for custodial maintenance only, such as ensuring that the floor of their balcony is kept clean and that the balcony drains are kept free of debris, while the strata corporation will be held responsible to pay for any structural repairs. Some maintenance, such as staining the floorboards of a deck, may not be easy to categorize and your strata corporation may wish to specify in its bylaws whether the individual owner or the strata corporation is responsible for it. The basic scheme set out in the Standard Bylaws has some merit, in that it saves the strata corporation from “cleaning up” after the residents and yet the strata corporation is responsible for and keeps control over major repairs.

It should also be kept in mind that owners who negligently damage common property may be responsible to pay for the repairs to it, subject to the proper application of insurance proceeds and the proper treatment of insurance deductibles. The application of insurance proceeds will be the subject of a subsequent article.

This article is meant to be used for discussion purposes only and should not be construed as legal advice. Strata corporations considering making amendments to their bylaws or allocating responsibility for repairs and maintenance to an owner or the strata corporation are encouraged to seek legal advice on their particular situation.

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