

Headline: **Managing Common Property**

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Patios, balconies and roof decks. These areas which may be common property, limited common property or part of a strata lot, generate nearly as many disputes for strata councils as the classic trio of people, parking and pets.

Strata lot owners tend to treat these areas as their own property even when they are actually common property. The strata corporation's rights and obligations with respect to these areas are governed by the strata plan, the *Strata Property Act* and the bylaws of the strata corporation. There may also be contracts, leases, or even rules of the strata corporation that come into play. The amount of control a strata council may exert on one balcony or patio may be different than what it can do with respect to the strata lot next door.

Following are some guidelines for strata councils to keep in mind when dealing with these areas.

1. It is trite and obvious, but still very important. Know the *Strata Property Act*. The basic provisions dealing with common property and limited common property are sections 3, 8 and 72-77.
2. Be familiar with the strata plan. Understand what areas are common property and what areas are limited common property or form part of a strata lot. [Note: if a patio or staircase is not shown on a strata plan, it is common property: *Reid v. LMS2503*.]
3. Understand the bylaws, both the standard ones and any that are specific to the strata corporation. Standard bylaws 6, 7 and 8 require owners to obtain consent from the strata council before altering common property and limited common property. Know what the strata council's rights and duties are under the bylaws.
4. A strata corporation can enact other bylaws governing the use of patios, balconies or roof decks. Possible bylaws include:
 - (a) regulation or prohibition of balcony enclosures, the installation of hot tubs or the construction of sheds;
 - (b) regulation or prohibition of items that can be placed on patios, balconies or roof decks, such as barbecues, planters, or furniture.If the strata council wants to pass and enforce a bylaw that prohibits something that is often kept on a balcony or patio, it will have to have a good reason for doing so.
5. Retroactive bylaws will rarely be enforced by the courts. If you don't want hot tubs on the balconies, enact a bylaw to prohibit them before any are installed and enforce such bylaws promptly if there is a breach.

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6. Developers build strata corporations in order to make a profit. To achieve this they sometimes agree to give a purchaser special or exclusive rights to common property in exchange for a higher purchase price. If the developer does it properly, such rights may be enforceable by the owner. If it is not done properly, the strata corporation may be able to set aside the agreement. However, the courts are quite sympathetic to an owner that paid a premium for more deck space that proves not to be theirs. A strata council of a new strata corporation should investigate the existence and enforceability of any such agreements as early as possible. The longer the owner has *de facto* possession of common property, the more difficult it may be to exert control over the area.

In order to be valid, the agreement needs to be implemented by making the area limited common property, either in the strata plan or by a $\frac{3}{4}$ vote resolution while the developer still owns all of the strata lots. Even a formal written lease between the strata corporation and the owner may not suffice, unless the lease can be shown to be in the best interests of the strata corporation. A 99 year lease for a nominal rent will likely not qualify.

7. If an owner asks for permission to alter common property, the strata council needs to consider how it will affect all owners. Permission should be granted unless there is an existing bylaw or a good reason. For example, refusing permission to attach a satellite dish to the wall of a balcony might be justified if doing so will jeopardize the strata corporation's building envelope warranty.
8. If permission is granted, consider carefully what terms should be imposed on the owner. Those terms should be put in writing and agreed to by the owner in writing. Future owners of the strata lot need to be made aware of their additional obligations, if any.
9. Exert control. A failure to do so may make it impossible when you really need to. Take steps to address unauthorized uses of common property promptly.
10. Act consistently. Unless there is a very good reason to treat different strata lot owners differently, don't do so.

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