
Section-ectomies

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Last Fall I received a call from a strata manager regarding sections. The owners in one of the strata corporations she manages no longer wanted to be divided into sections. The council and section executives were finding that the extra administration time and costs of having sections wasn't worth it. They wanted to be one strata corporation, with one budget. I was asked what needed to be done in order for the sections to be cancelled and for the strata corporation to run without having sections. With legal assistance, the strata took the steps necessary to cancel its sections.

As cancelling sections is becoming a common topic in the strata community, I have written this article to explain some basic information about sections and to outline matters that need to be addressed in order to properly cancel sections.

Sections are separate legal entities created by strata bylaw. Bylaws creating sections may be filed in the land title office by the developer at the inception of the strata corporation or passed by the owners and filed by council.

Different sections can be created to recognize different structures and uses of the strata lots in the complex. For instance, owners of residential and nonresidential strata lots can each create sections, as well as owners of nonresidential strata lots used for significantly different purposes. Different types of residential strata lots, such as apartment style, townhouse style and detached houses can each form their own sections.

The main attraction to have sections is that they allow for a certain amount of independent decision making and financial separation. For instance, owners within a

section have their own section executive and can vote on and file bylaws for matters that relate solely to the section. Sections also have annual and special general meetings and vote on their own yearly budget. Sections establish their own operating fund and contingency reserve fund for common expenses of the section, including expenses relating to limited common property designated for the exclusive use of all strata lots in the section. None of this changes the obligations to properly govern the strata corporation.

For some strata complexes, the added time and expense involved in running sections outweighs the benefits. Having sections means extended administrative time, extra expenses, and more complicated governance. For instance, if the complex is professionally managed, each section should enter into a separate management agreement. It can be difficult for those individuals that serve as both council members and section executive members to make sure that they are separating out the financial and legal obligations of each entity correctly. For example, sometimes matters that should be dealt with at a section executive meeting are dealt with at a council meeting.

In developing a process to cancel sections, my first consideration was section 193 of the *Strata Property Act*, which provides as follows:

Creation or cancellation of sections by strata corporation

- 193** (1) To create or cancel sections, the strata corporation must hold an annual or special general meeting to consider the creation or cancellation.
- (2) The notice of meeting must include
- (a) a resolution to amend the bylaws to provide for either the creation and administration of each section or the cancellation of the sections, and
 - (b) any resolutions to designate limited common property, in accordance with section 74, for the exclusive use of all the strata lots in a section or to remove a designation in accordance with section 75.
- (3) The resolution referred to in subsection (2) (a) must be passed
- (a) by a 3/4 vote by the eligible voters in the proposed or existing section, and
 - (b) by a 3/4 vote by all the eligible voters in the strata corporation.
- (4) On the filing in the land title office of a bylaw amendment creating a section, a section is created bearing the name "Section [number of section] of [name of strata corporation]".
- (5) On the creation of a section the registrar may establish a general index for the section.

As a result, the guidance given in the *Strata Property Act* regarding cancelling sections is limited to passing a bylaw and potentially removing certain designations of limited common property for all strata lots in a section. Drafting the appropriate resolutions, however, is only one of many tasks that need to be accomplished in order to properly cancel sections.

The cancellation of sections involves transferring the assets and liabilities of each section to the strata corporation. As a result, each section should enter into an agreement (referred to as a "Succession Agreement") with the strata corporation. The Succession Agreement carefully sets out the process and timing for transferring the assets and liabilities of

the section to the strata corporation. Examples of assets that need to be transferred are the operating fund, contingency reserve fund and monies owing to the section, such as strata fees and special levies. An example of a liability that needs to be paid prior to the cancellation of the section or transferred to the strata corporation is a repair expenses incurred by the section. A section may have other legal obligations, such as obligations to pay a service provider under an agreement, and those obligations need to be transferred to the strata corporation or terminated.

Strata corporations that have sections as per the bylaws but do not actually run separate sections will require simplified documentation when they cancel sections. The reason for this is that they may not have an operating account, contingency reserve fund account, or have incurred liabilities.

Those council and section executive members who find that having sections no longer serves the purposes of their strata community should consider retaining legal counsel to advise on the pros and cons of continuing with sections. Incurring the one time cost involved in cancelling sections may be more attractive than incurring the long term increased administrative time and costs of having sections.

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