

**Condo Smarts**

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**Dear Condo Smarts:** We live in a large bare land development in the Okanagan Valley that is all one strata, but has been phased on over a couple of years. Each buyer has dealt with the developer when they built their home, or contracted the developer to build their home for them and so far everything has proceeded along smoothly. Now we've come to a bit of an impasse with the strata council. The developer has sold all of his units and no longer has an interest in the strata corporation as an owner, and has stopped dealing with property owners who have not yet built a home. In his opinion, "I've sold my units, so I'm, done with the development. It's all up to the strata council now." So here's our dilemma. The council agrees that the building scheme is beneficial, but we sought some advice on how to enforce it, and discovered that it really isn't within the authority to enforce the restrictions placed on property development. Council's authority is limited to the Strata Act and any bylaws that are registered. The developer said that because it's in the disclosure we must enforce it. Could you help clarify this relationship for us. Bryan G.

**Dear Bryan:** A building scheme is a covenant imposed by the developer on the lands within the development and is binding on all the owners of that land. The building scheme is filed on each title, binding each property to the conditions and limitations set out in the scheme. The building scheme can set out height restrictions, floor space ratio to lot size, design, and protection of green space barriers or landscaping requirements to preserve the integrity of the development and your neighbour's rights. Before buying into a bare land strata, buyers should always search a title to investigate whether there is a building scheme in place and how it will apply to your future use. While the collective interest of the strata corporation may be important in preserving the building scheme, whether or not a strata council supports or enforces the building scheme is often the contentious issue. The most common question I

receive on building schemes is, "who enforces it?" While the owner developer is still in an active relationship with the strata corporation they often enforce the scheme, or if all the lots are sold, you as owners are still engaged in this covenant (the building scheme) upon which you bought and may collectively or individually enforce the scheme. There is no clear transition in the Strata Property Act or the Real Estate Development Marketing Act that defines the duty to apply the building scheme once the developer is no longer engaged with the strata, because the scheme is in the name of the developer, not the strata corporation; however, the duty to comply still rests with the developer and each property owner bound by the building scheme and their neighbours. In the event an owner is in violation of the building scheme, either the developer, potentially the strata corporation by  $\frac{3}{4}$  vote, or any owner(s) may seek a court decision to have the building scheme enforced. What must be included in the disclosure statement is what the developer intends to provide or restrict in their relationship with buyers, and does not necessarily bind the strata corporation unless those agreements are with the strata corporation. For example, service contracts, bylaws filed in the land registry, or a rental disclosure statement. One of the positive scenarios that we encounter is where the building scheme has also been filed by the owner developer as a bylaw or the strata corporation has adopted the scheme as a bylaw. While this certainly makes it easier for a strata corporation to enforce the bylaw, what happens when the strata repeals the bylaw (only requiring a  $\frac{3}{4}$  vote) or the filed scheme is not the same as the bylaw? Because building schemes vary so greatly, and the relationships can be complicated, strata councils and owners should seek legal advice when a complication arises from the application of a building scheme. Don't forget the provincial government is conducting a public survey on Depreciation Reports and Audits. To register go to <http://housing.gov.bc.ca/housing/strata.htm>

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