

STRATA DEVELOPMENT 101

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I. WHY SHOULD I LEARN ABOUT STRATA PROPERTY?

Not only is it quite possible that you will own strata property at some point in time, but as a local government employee, you need to understand strata property because virtually all local government issues apply to stratas, including zoning, taxing, development, and servicing.

II. HOW DOES STRATA PROPERTY DIFFER FROM NON-STRATA PROPERTY?

When you own a strata property you are a member of a strata corporation that shares common expenses for the management and maintenance of common property.

III. WHY IS NON-STRATA PROPERTY SOMETIMES CALLED FEE SIMPLE PROPERTY?

Actually, both strata and non-strata property is fee simple property. Fee simple means that the registered owner of the property owns all rights associated with it, except for exceptions in the Crown grant and except for registered charges such as leases.

IV. WHAT IS THE DIFFERENCE BETWEEN A BARE LAND STRATA AND A BUILDING STRATA?

In a bare land strata, a parcel of land (usually vacant) is stratified, such that some of the land becomes a strata lot and some of the land becomes common property.

In a building strata, the land is not stratified. Instead, the building is stratified into different strata lots. Elevators, hallways and similar spaces are common property, and usually the entire land area surrounding the building is common property.

V. WHAT IS COMMON PROPERTY?

Section 1(1) of the *Strata Property Act* defines common property as:

...

- (a) that part of the land and buildings shown on a strata plan that is not part of a strata lot, and
- (b) pipes, wires, cables, chutes, ducts and other facilities for the passage or provision of water, sewage, drainage, gas, oil, electricity, telephone, radio, television, garbage, heating and cooling systems, or other similar services, if they are located

- (i) within a floor, wall or ceiling that forms a boundary
 - (A) between a strata lot and another strata lot,
 - (B) between a strata lot and the common property, or
 - (C) between a strata lot or common property and another parcel of land, or
- (ii) wholly or partially within a strata lot, if they are capable of being and intended to be used in connection with the enjoyment of another strata lot or the common property;

Common property can be identified on a strata plan usually by the letters “CP” or “C”.

VI. HOW IS COMMON PROPERTY OWNED?

Common property is owned by all owners as tenants in common in proportion to the unit entitlement of each owner’s strata lot relative to the total unit entitlement of all strata lots.

VII. WHAT IS A COMMON PROPERTY RECORD?

Once a strata plan is deposited at the land title office, the land title office creates a common property record. Pursuant to the *Strata Property Act* and the Strata Property Regulation, the registrar of land titles is required to note on a common property record all charges and interests that separately charge the common property on a strata plan, any freehold disposition of common property by the strata corporation and any removal or designation of limited common property.

VIII. WHAT IS LIMITED COMMON PROPERTY?

Pursuant to section 1(1) of the *Strata Property Act* limited common property is common property designated for the exclusive use of the owners of one or more strata lots.

An owner developer can designate common property as limited common property up until the first annual general meeting. Conversely, strata lot owners can designate common property as limited common property by amending the strata plan or by passing a 3/4 vote resolution.

IX. CAN STRATA PROPERTY BE TRANSFERRED LIKE NON-STRATA PROPERTY?

A strata property can be transferred, leased, mortgaged, etc. just like a non-strata property.

X. HOW IS STRATA PROPERTY TAXED?

Section 67 of the *Strata Property Act* provides that each strata lot together with the owner's share in the common property and any other taxable common assets of the strata corporation is a separate parcel of land for the purposes of assessment and taxation.

This means that each strata lot is separately taxed for the purposes of general taxation, parcel taxes, etc. This also means that common property is not separately taxed.

XI. WHAT IS A STRATA CORPORATION?

The strata corporation is responsible for managing and maintaining the common property and common assets of the strata corporation for the benefit of the owners.

XII. WHO ARE THE MEMBERS OF THE STRATA CORPORATION?

The owners of the strata lots in the strata plan are the members of the strata corporation.

XIII. HOW IS THE STRATA CORPORATION FORMED?

The strata corporation is established upon the deposit of the strata plan in the land title office.

The powers and duties of the strata corporation are exercised and performed by the strata council, unless stated otherwise in the *Strata Property Act*, the regulations or the bylaws.

XIV. WHAT IS THE STRATA COUNCIL?

The strata council carries out the powers and duties of the strata corporation. The first strata council is elected at the first annual general meeting, and thereafter at each annual general meeting, unless the bylaws state otherwise. Pursuant to section 28 of the *Strata Property Act*, owners, individuals representing corporate owners, and tenants to whom owners have assigned voting rights are all eligible for being on the strata council.

XV. HOW MANY VOTES?

According to section 53 of the *Strata Property Act*, each strata lot has one vote at an annual general meeting or a special meeting, unless different voting rights have been established.

XVI. WHAT ARE STRATA SECTIONS?

The *Strata Property Act* permits strata corporations to have owners organized into different sections. For example, owners of commercial strata lots can be in a different section of the strata corporation than owners of residential strata lots.

If there is a matter of common interest to all strata lot owners, the strata corporation retains its powers in respect of those matters. But for matters that relate solely to a section, the section is a corporation and has many of the same powers and duties as the strata corporation.

XVII. HOW ARE COSTS SHARED?

The strata corporation is responsible for the common expenses of a strata corporation. The funds necessary to pay the common expenses are collected from the owners of the strata lots by way of strata fees. Strata fees are determined by reference to the budget approved at the annual general meeting and calculated in accordance with unit entitlement.

XVIII. HOW IS PARKING ALLOCATED?

Local government bylaws specify the required number of parking stalls, but they do not dictate how the developer must allocate them.

Parking stalls may be allocated in any of the following ways:

- The parking stall may be part of the strata lot itself.
- The parking stall may possibly be a separate strata lot, or part of a parkade that is a separate strata lot.
- The parking stall may be common property and allocated by the strata corporation.
- The parking stall may be common property, but leased to a company controlled by the developer and then licensed to the strata lot owner.
- The parking stall may be limited common property for the use of the strata lot owner.

XIX. WHAT ARE THE STRATA BYLAWS?

Section 119 of the *Strata Property Act* provides that each strata corporation must have bylaws. The strata corporation's bylaws may provide for the control, management, maintenance and use and enjoyment of the strata lots, common property and common assets of the strata corporation.

XX. WHAT ARE RULES?

Pursuant to section 125 and section 197 of the *Strata Property Act*, the strata council can make "rules" to govern the use, safety and condition of the common property and common assets of the strata corporation. According to the Act, if a rule conflicts with a bylaw, the bylaw prevails.

XXI. WHAT IS THE STATUS OF BARE LAND STRATA ROADS?

Often, these roads are the only common property in a bare land strata. As common property, the roads are jointly owned by the strata lot owners. The roads are managed and maintained by the strata corporation.

This means that the local government is not responsible for these strata roads. It also means that despite the fact that they appear for all purposes to be ordinary municipal roads, they are not public highways and the strata lot owners may erect gates or otherwise restrict the public from using the strata roads.

XXII. HOW DO BUILDING STRATAS AND BARE LAND STRATAS DIFFER IN TERMS OF SUBDIVISION APPROVAL?

Section 243 of the *Strata Property Act* requires a bare land strata plan to be approved by the Approving Officer.

In order for the Approving Officer to approve a bare land strata plan, it must meet the requirements of the Bare Land Strata Regulation.

There is no Approving Officer or other local government approval necessary for a building strata plan. This is not commonly known, and some local governments defer requirements, expecting to impose them at the time of approval of the building strata plan.

XXIII. HOW DO BUILDING STRATAS AND BARE LAND STRATAS DIFFER IN TERMS OF SERVICING REQUIREMENTS?

Servicing of bare land strata developments is addressed by the Bare Land Strata Regulations.

Servicing of building strata developments is addressed by sections 938 through 940 of the *Local Government Act*, the local government's servicing bylaw and building bylaw and the Building Code, to the extent those are applicable to strata developments.

XXIV. DO THERE NEED TO BE EASEMENTS BETWEEN STRATA LOTS?

Section 69 of the *Strata Property Act* provides that there are implied easements between and among each building strata lot and common property. This means that in a building strata, there do not need to be registered easements for support, for utilities, or other services.

However, section 69 does not apply to bare land strata developments, so there must be specific registered easements for shared driveways, shared utilities, and any other shared services.

XXV. WHAT IS A STRATA CONVERSION?

Section 242 of the *Strata Property Act* allows a previously occupied, building to be converted into strata lots. The term “previously occupied” is broadly defined in the Strata Property Regulation, but excludes display homes.

That strata subdivision must be approved by the “approving authority”, which is generally defined in section 242 as the municipal council or regional board.

The approving authority must not approve the conversion unless the building substantially complies with applicable bylaws and the Building Code.

The approving authority must also consider other factors listed in section 242, such as the need for rental accommodation in that area.

In *Burton v. Harris* [2003] B.C.S.C. 523, the B.C. Supreme Court held that the Village of Anmore Council should not have approved the conversion of two houses into two strata lots because the second house was newly constructed and was not previously occupied, and because the second house did not comply with the zoning bylaw, since it was not an accessory suite in an accessory building.

XXVI. CAN STRATA PROPERTY BECOME NON-STRATA PROPERTY AND VICE VERSA?

The short answer is yes, but not easily. Local governments most often become involved with this issue as a part of highway exchanges.

Part 15 of the *Strata Property Act* deals with amendments to a strata plan. For example, it allows a strata lot to become common property, or common property to become fee simple land owned by the strata corporation.

In many cases - for example, to dedicate part of a strata lot as a highway - it is necessary for several steps to occur to achieve the desired result.

XXVII. WHAT IS A LEASEHOLD STRATA?

Part 12 of the *Strata Property Act* permits the creation of a leasehold strata.

These transactions involve three parties. The landowner is called the “head landlord” and must be a municipality, regional district or other public authority.

The head landlord leases the land to the developer/tenant, by way of a ground lease. A model strata lot lease must be attached to the ground lease.

The developer/tenant then files a leasehold strata plan in the land title office. The filing of this plan then converts the ground lease into individual strata lot leases, and the model strata lot lease applies to the individual leasehold stratas.

The developer/tenant would then assign the strata lot leases to the leasehold tenants.

The legislation allows the head landlord to impose “restrictions on the occupancy” of the leasehold strata lots. For this reason, because there were concerns about the ability of a *Land Title Act*, section 219 covenant to restrict the users of land, leasehold stratas were sometimes used to restrict housing to seniors or low-income tenants.

XXVIII. WHAT IS A PHASED STRATA DEVELOPMENT?

Part 13 of the *Strata Property Act* deals with phased stratas.

Developers planning large strata developments often wish to construct only an initial phase of the development in order to test the market and in order to avoid flooding the market with too many available units.

In that case, the developer may proceed with a phased strata development provided it files a Form P with the Approving Officer. The Form P must set out the areas and schedules for the different phases. Generally speaking, the developer is not required to proceed with all or any of the phases.

A strata plan is filed for each phase. The strata plan creates the phase and leaves remainder land, which may or may not be included in later phases. As each phase is completed, those new strata lots are automatically included as part of the initial strata development, such that there is only one strata corporation for all the phases.

If there will be common facilities, the Form P must state which phase with which they will be built, and the developer must provide security for those common facilities.

The developer cannot deposit a phased strata plan unless that plan has been approved by the Approving Officer. The Approving Officer must approve the plan if it substantially complies with the Form P.

XXIX. WHAT IS NEEDED FOR THE GRANTING OF A COVENANT OR STATUTORY RIGHT OF WAY OVER STRATA PROPERTY?

If the document relates solely to a strata lot - for example, a covenant that “the strata lot shall have no more than one set of cooking facilities” - then that covenant may be granted by the strata lot owner.

However, it is common for documents to relate to common property - for example, a statutory right of way for a municipal waterline beneath a common property roadway.

In those cases, section 80 of the *Strata Property Act* requires a resolution approving the document to be passed by at least 3/4 of the owners at an annual general meeting or special meeting of the owners. A certificate confirming the passage of the resolution must be attached to the document.

XXX. CAN AN AIR SPACE PARCEL BE STRATA SUBDIVIDED?

Yes, this is permitted by section 141(3) of the *Land Title Act*.

Considering the size of the *Strata Property Act* and its regulations this paper barely touches the surface of this area of law. Accordingly, if you have specific questions in this area ensure you look at the wording of the legislation in detail, and seek legal advice if necessary.