

## Strata Property Legislation – 13 Critical Needs for Change

Strata Legislation Issue	Why It Is An Issue	Proposed Solution
<b>A. Strata Disputes</b>		
A.1. Lack of publicly available authoritative source of SPA interpretation	Many and perhaps most disputes in stratas occur because the parties to the dispute lack reliable information on the requirements of the SPA.	Broaden the powers and duties of the Homeowner Protection Office to provide a “help line” and interpretive letters on the requirements of the SPA.
A.2. Dispute resolution	Many disputes remain unresolved because arbitration is too cumbersome and its costs too uncertain. The arbitration process provided in Part 10 of the SPA is complicated and expensive (with one arbitration over the feeding of seagulls costing \$160,000).	Establish a simplified process for a provincial court judge to hear a dispute where lawyers are not required and where the cost of lawyers is not a cost to be awarded. In principle this would be similar to the simplified process of small claims court where a minimal filing fee is the only cost to the complainant.
A.3. Lack of offences and penalties provision	For improper conduct or non-compliance with the Strata Property Act, the regulations or the strata bylaws by a developer, a strata corporation, an employee of a strata corporation, a member of a strata council or an owner there is no offence provision or penalty in the SPA. The only offence provision or penalty of any kind under the SPA is section 290 that specifies the offence of knowingly making a false statement in a Certificate of Strata Corporation and the penalty therefore.	Amend the SPA to provide penalties for improper conduct and non-compliance with the SPA.
<b>B. Strata Management</b>		
B.1. One-sided provision for termination of strata management contracts	Under section 39(1)(a) of the SPA a $\frac{3}{4}$ vote of owners is required before giving 2 months notice of cancellation of a strata management contract. No $\frac{3}{4}$ vote is required before a strata council enters into such a contract. This provision places the strata corporation at an unfair disadvantage when it comes to terminating a strata management contract since the other party to the contract has no similar requirement imposed upon it. Also, some strata management companies are attempting to coerce strata councils into accepting a contract with no expiry date.	Amend section 39(1)(a) to permit the strata council to give 2 months notice and require a strata management contract to contain an expiry date.

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B.2. Policing of strata management companies	Strata managers are licensed by the Real Estate Council of BC (RECBC). Under section 5-1(5.1)(a.1) of its Rules (Ministerial Order M417) the Council has set low standards for the contracts these companies have with strata corporations such that they do not ensure a strata council has a mechanism to get out of a strata management relationship that is not working. Also, the RECBC has a general policy of taking complaints only from strata councils. These shortcomings mean that strata owners are not being adequately protected from incompetent or unscrupulous strata management companies who advise, and sometimes control, strata councils.	Relocate the power of licensing strata management companies to the Homeowner Protection Office with a mandate to focus on strata owner protection rather than strata manager protection.
<b>C. Financial Disclosure</b>		
C.1. Financial reporting	Financial reports in many stratas are indecipherable and are not prepared according to the Strata Property Act or any known accounting standards. Many of these reports are prepared by licensed strata management companies. As a result, strata councils are unable to make sound financial decisions on behalf of the strata.	Amend the SPA and provide for a regulation which sets down the details of the basic financial reports required of a strata and how often they are required. Also, extend the power of the Homeowner Protection Office to enforce the financial reporting requirements of the regulation.
C.2. Adequacy of contingency reserve funds (CRF)	The current SPA and regulations do not base the required amount of a CRF on the cost of replacing or repairing depreciated common assets. As a result, a strata owner or prospective buyer is unable to fairly judge the financial position of the strata corporation. Furthermore, an inadequate CRF can result in an onerous special levy which a strata owner may be unable to pay.	Amend the SPA to: (a) require a periodic (eg. 5 year) survey of depreciated assets and a report to all strata owners with the latest report also made available to prospective strata buyers, and (b) require the strata corporation to have a written policy (adopted by ¾ vote at an AGM) on the amount of CRF to be maintained with this policy also made available to prospective strata buyers.
<b>D. Strata development approvals &amp; accountability</b>		
D.1. Bare land strata approval process	Individual strata owners who purchased a lot in an early phase of a development are excluded from the approval process for subsequent phases. As a result, there are occasions where a subsequent phase is approved with that phase contradicting representations made by the developer in its disclosure for previous phases. Individual strata owners are essentially being	Amend the Bare Land Strata Regulations to require the approving officer to consult with individual strata owners before approving a subsequent phase and empower the approving officer to refuse to approve a subsequent phase where he has reason to believe its

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	denied due process in the approval of phased bare land stratas.	approval would contradict a representation made by the developer in a previous disclosure statement.
D.2. Fraudulent misrepresentation by developers	Under the Real Estate Development Marketing Act (REDMA) it is left up to the affected home buyer to sue a developer where that homeowner has been defrauded through a misrepresentation. The Superintendent of Real Estate will not get involved as it is believed to be beyond the mandate of that office to invoke a prosecution or penalty for civil fraud. This leaves the empty-pocketed home buyer in the position of having to sue the deep-pocketed developer to obtain justice. It just doesn't happen.	Amend REDMA to empower the Superintendent to initiate an action to fine a developer where a misrepresentation has occurred.
D.3. Change to strata development boundaries	Presently, an owner developer can extend the boundaries of the planned strata development beyond what was originally represented to strata owners and appears to be able to do so without any agreement from strata owners. Section 78(1) of the SPA is unclear as to whether the extension of the development boundaries is included in "Before a strata corporation acquires land". As a result, attempts have been made to thrust the costs of expanded development upon strata owners without their consent.	Amend section 78 to clarify that a ¾ vote of owners is required before the boundaries of a strata development can be changed from those originally disclosed and approved.
D.4. Strata responsibilities	Section 3 of the SPA makes the strata corporation "responsible for managing and maintaining the common property and common assets of the strata corporation for the benefit of the owners". Some developers and strata councils in bare land stratas have taken on the responsibility for maintaining assets on public or private land, ie. assets not located on common property such as street lights on public right-of-way. It is not clear that the SPA prohibits the taking on of such responsibility. If it does not, a strata corporation could get itself into all kinds of difficulty by getting into things it has no competence to manage.	Amend section 3 to specifically limit the property maintenance powers of a strata corporation to the common property and common assets within the strata plan.

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D.5. Definition of common facilities	It is not clear that section 227 applies to the operating and maintenance costs of a sewage treatment plant owned by the owner developer. This lack of clarity arises because the definition of “common facility” in section 217 does not mention ownership of the facility nor does it specifically mention a sewage treatment plant commonly required in a bare land strata. As a result, some developers are not applying section 227 to sewage operating and maintenance costs and are charging strata corporations a higher percentage of the costs than permitted under section 227.	Amend sections 217 and 227 to clarify that the owner developer’s share of sewage treatment expenses is subject to the formula under section 227(2).
<b>E. Strata fee calculation</b>		
E.1. Establishing unit entitlement of strata lot	<p>Section 246 (3) of the SPA provides the option of using “habitable area” in square metres to calculate unit entitlement for purposes of calculating strata fees unless otherwise requested and approved at the time of depositing a strata plan (which is normally done by the developer). Many developers use this option.</p> <p>If the units are similar in size this may not pose a problem. However, there can be a large variance in size as happens in many townhouse stratas, particularly when there is a mix of two storey and bungalow units. In such cases the fees for the two storey units can be 80% or greater than those of the smaller bungalow units even though the assessed value of the properties does not reflect such a large variance. Roof replacement tends to be the most frequent major repair to be financed by strata fees. Frequently, two storey units have smaller sized roofs, and the cost of rebuilding a two storey unit is less per square foot than for a single storey unit or bungalow. However, the two storey units generally pay a much higher portion of the strata costs for roof replacement and building insurance.</p>	To obtain a fairer way of determining unit entitlement and calculation of strata fees under section 99, serious consideration should be given to amending section 246(3) of the SPA to change “habitable area” to “assessed value as determined by BC Assessment for the purposes of property taxation”.