

THE DREADED FORM B

PARKING / STORAGE LOCKERS ASSIGNMENTS & ALTERATION
AGREEMENTS

Alex J. Chang

Lesperance Mendes Lawyers

550-900 Howe Street, Vancouver BC

604-685-1255 / AJC@LMLAW.CA

The Form B: Information Certificate (s. 59)

- The Form B discloses a variety of important information about a strata lot and the strata corporation
- Upon request, the strata has 7 days to issue the Form B
- The information on the Form B must be current as at the date it is issued
- The information disclosed in a Form B is binding on the strata corporation in its dealings with a person who relied on the certificate and acted reasonably in doing so (s. 59(5))

The Form B Disputes (s. 59)

- On application by the strata corporation, by an owner or by a person who is affected by a certificate, the Supreme Court may make any order it considers just in the circumstances to give effect to or relieve the strata corporation from some or all of the consequences of an inaccurate certificate (s. 59(6))
- The Civil Resolution Tribunal (CRT) has ruled that it does not have jurisdiction to resolve disputes over an erroneous Form B (see *Fisher v. Strata Plan VR 1420*, 2019 BCCRT 1379; *Fung et al v. Strata Plan NW 1294*, 2019 BCCRT 443; *Proulx et al v. Strata Plan VR 841*, 2019 BCCRT 297; *Pilehchianlangroodi v. Strata Plan LMS 1816*, 2019 BCCRT 367). However, the CRT has enforced Form B's where no inaccuracy is claimed (see *Wood v. Strata Plan VR 2646*, 2018 BCCRT 261; *Bolkan v. Strata Plan VIS 7077*, 2018 BCCRT 64).
- The apparent exclusion of disputes over erroneous Form B from the CRT's jurisdiction creates a cost and procedural barrier for claims but also makes resolving those claims more costly.

Sometimes Mistakes are Made on the Form B

- The most common mistakes seem to be with respect to alteration agreements (para. c) and the allocation of parking and storage spaces (para. m) (both require historic knowledge and accurate records)
- Until 2014, the Form B made no mention of parking spaces or storage lockers
- Errors can be made concerning the allocation of parking and storage lockers (serious problem)
- Alteration Agreements get lost in the mists of time (less serious problem)

Reducing the Risk of Mistakes

- The strata manager and council must understand how parking and storage is allocated (it is not the same for all strata corporations)
- If the strata hasn't done one since 2014, the strata SHOULD do an audit of parking space and storage lockers assignments
- The strata should keep up to date records of all alteration requests, approval, and alteration agreements

How is parking & storage allocated in strata development?

- Parking and storage will either be:
 - a separate strata lot (very rare and now prohibited in residential stratas)
 - part of a strata lot (common in older developments)
 - part of the common property that is allocated by a lease or limited common property designation (most typical)
 - located on another parcel of land (usually the remainder of an air space parcel (“ASP”) (typical)

What is common property?

- “common property” means that part of the land and buildings shown on a strata plan that is not part of a strata lot
- “limited common property” or “LCP” means common property designated for the exclusive use of the owners of one or more strata lots
- LCP is “designated for exclusive use” on the registered strata plan
 - By the owner developer on the registered strata plan, or
 - By the strata corporation
 - with a $\frac{3}{4}$ vote and sketch plan filed on the general index under s. 74
 - With a unanimous vote to amend the strata plan under s. 257

Checking the strata plan

- Check the legend on the first page of the REGISTERED strata plan
- Check the relevant page of the REGISTERED strata plan
- Does this match how parking is allocated at the strata?

LEGEND :

BEARINGS ARE GRID BEARINGS DERIVED FROM MONUMENTS 77H4895 AND 77H4687

- ⊙ CONTROL MONUMENT FOUND
- STANDARD IRON POST FOUND
- LEAD PLUG FOUND

ⓑ DENOTES BALCONY, L.C.P.
B1 S.L. B1 (TYPICAL)

Ⓟ 1B DENOTES PARKING STALL
L.C.P. S.L. 1B (TYPICAL)

S.L. DENOTES STRATA LOT

m² DENOTES SQUARE METRES

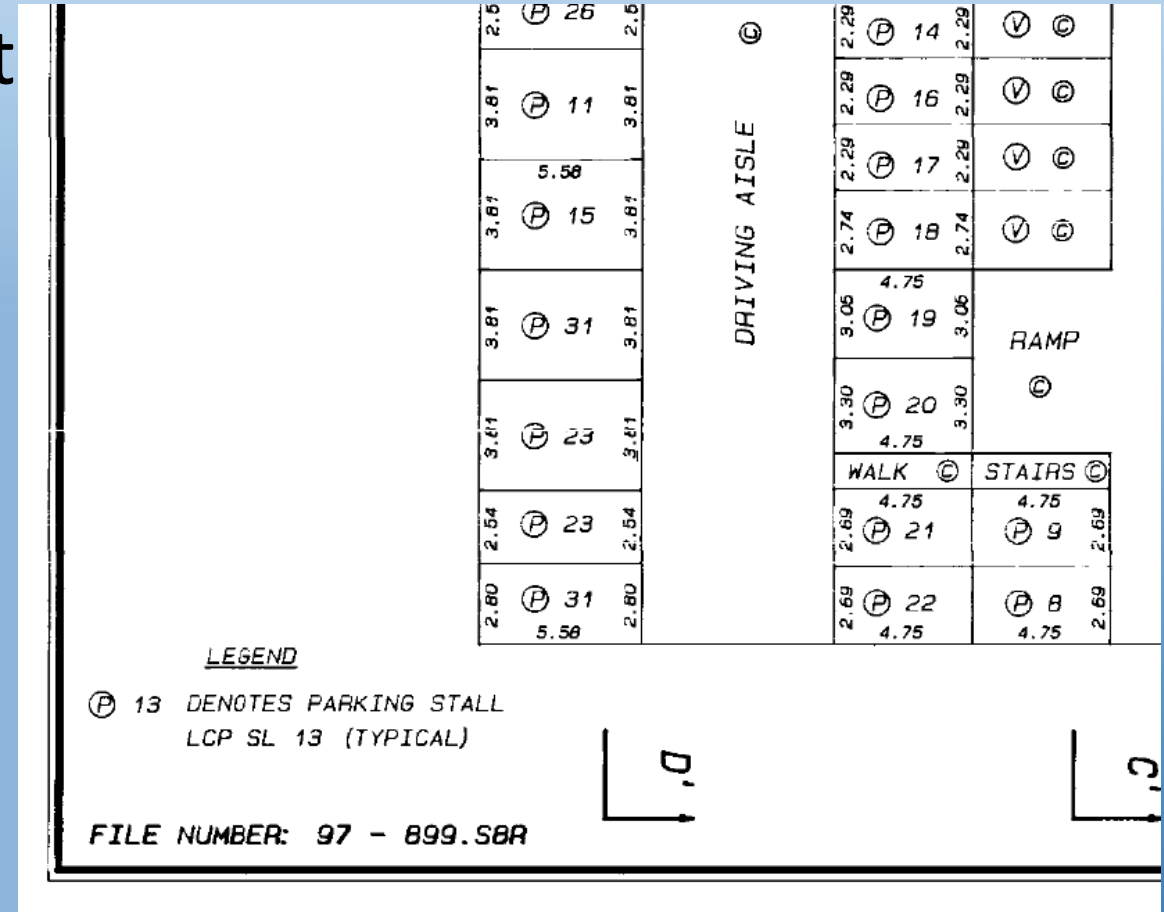
Ⓒ DENOTES COMMON PROPERTY

Ⓥ DENOTES VISITOR PARKING

THIS PLAN LIES WITHIN THE
GREATER VANCOUVER REGIONAL DISTRICT

Checking the strata plan

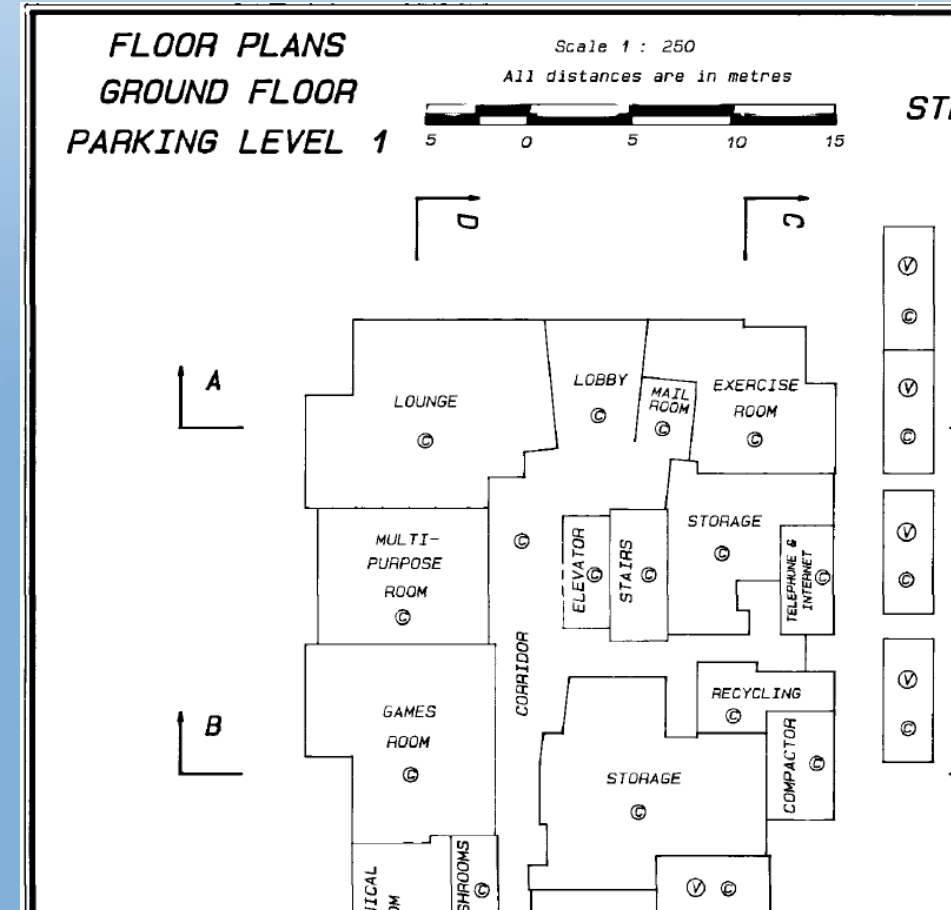
- Check the legend on the first page of the REGISTERED strata plan
- Check the relevant page of the REGISTERED strata plan
- Does this match how parking is allocated at the strata?



Example of LCP Parking

Checking the strata plan

- Check the legend on the first page of the REGISTERED strata plan
- Check the relevant page of the REGISTERED strata plan
- Does this match how parking is allocated at the strata?



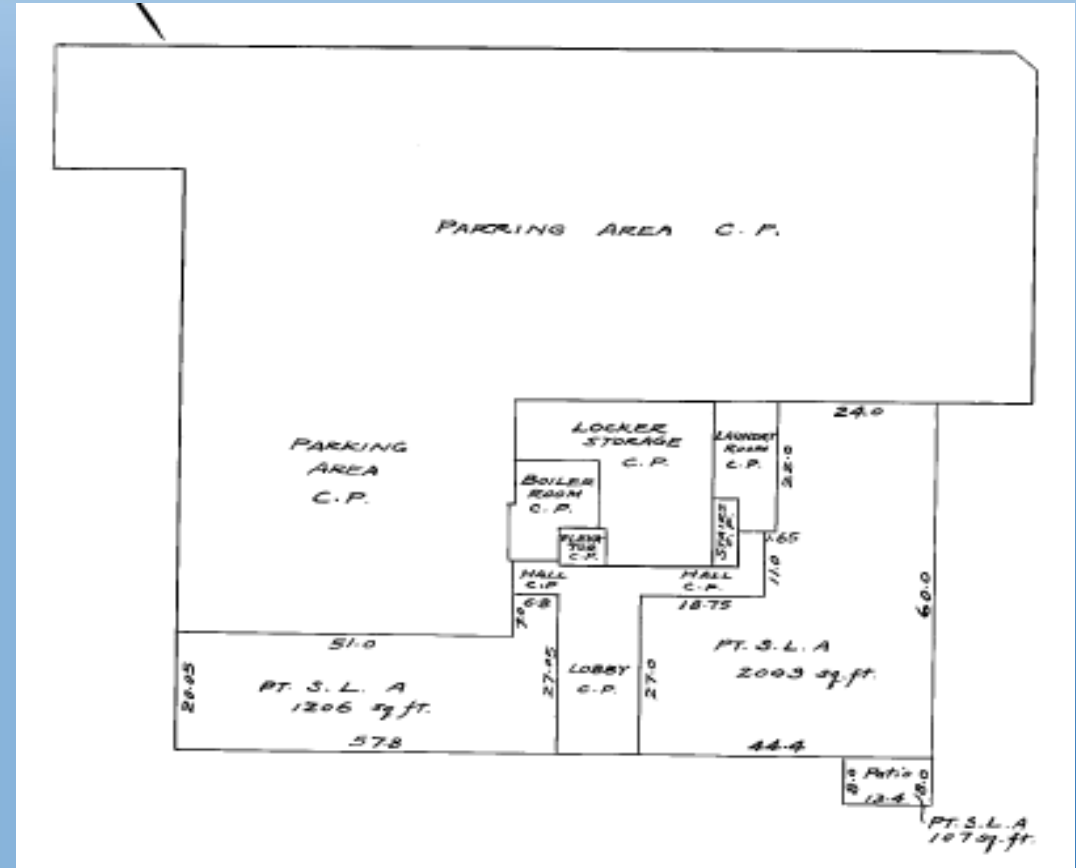
Example of Common Property Storage

When you need to worry...

If you want to put this on a Form B...

- Parking or storage is common property, and
- Parking is allocated by either
 - council approval or
 - by owner developer assignment

... and you have this on the strata plan...



You need to be all...



Allocation by Council Approval

- Highest risk for buyers
- Owners trade and even “sell” parking spaces assigned by the council to each other without informing the strata corporation
- Allocations by council may be subject to change in the future (the buyer needs to understand this)

Allocations by Council are not Permanent

Short term exclusive use

76 (1) Subject to section 71, the strata corporation may give an owner or tenant permission to exclusively use, or a special privilege in relation to, common assets or common property that is not designated as limited common property

(2) A permission or privilege under subsection (1) may be given for a period of not more than one year, and may be made subject to conditions

(3) The strata corporation may renew the permission or privilege and on renewal may change the period or conditions

(4) The permission or privilege given under subsection (1) may be cancelled by the strata corporation giving the owner or tenant reasonable notice of the cancellation

Additional due diligence for allocations by council

- Does the strata have a bylaw or resolution setting out common property parking and storage locker allocations?
- Does the strata keep a register of parking and storage locker allocations?
- Does the council's assignment comply with s. 76 (automatic renewals are ok)?
- Are assignments recorded in council minutes?

Allocation by Owner Developer

- You only see a reference to this on the Form B and not in the SPA
- The developer can allocate parking and storage as LCP, but most developers prefer not to, to give buyers the option to choose spaces and “purchase” rights for extra parking and storage (i.e. to maximize profits)
- This is done through a long term lease entered into by the developer and a related entity **BEFORE THE DEPOSIT OF THE STRATA PLAN**
- Parking and storage is then allocated by “partial assignments” to purchasers of stalls and lockers for the term of the long term lease

Allocation by Owner Developer

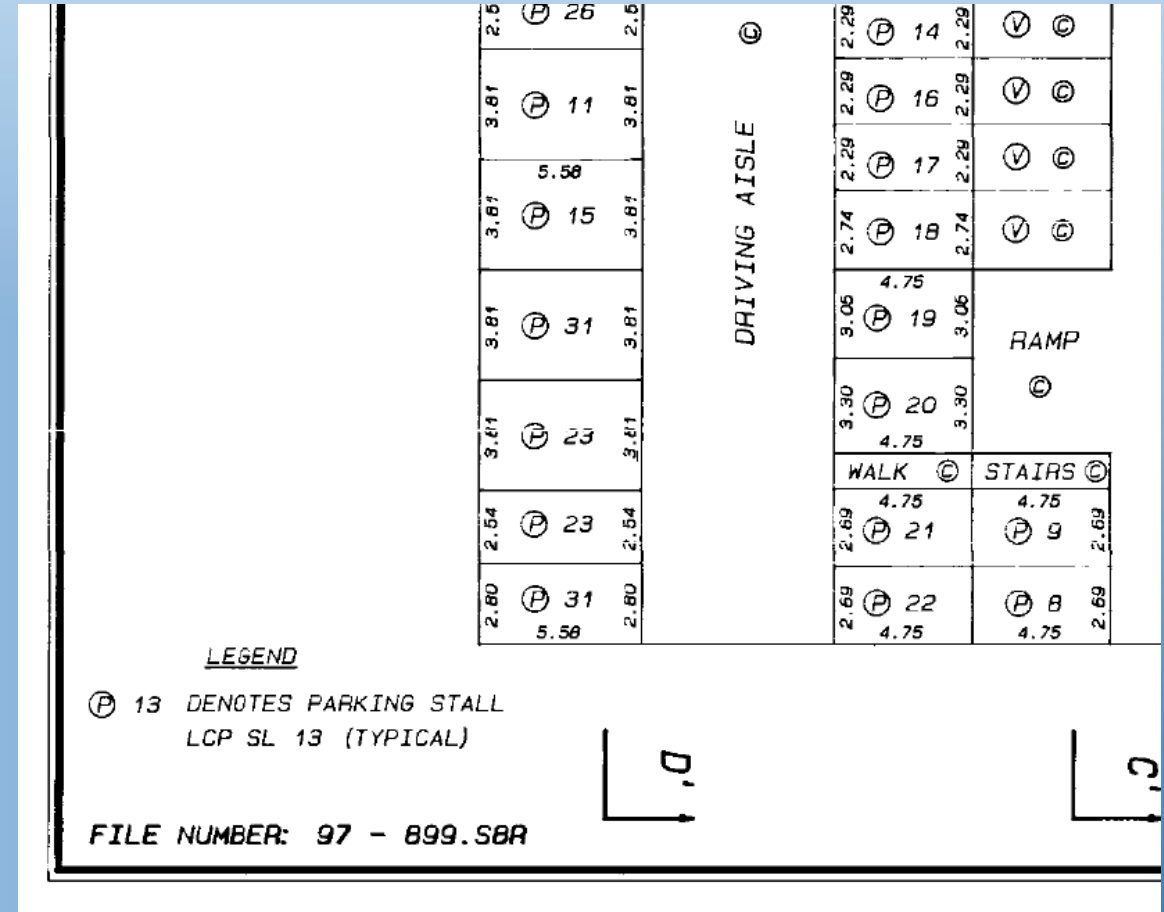
- Leases are not registered at the LTO or on the General Index
- Section 20 of the SPA requires the owner developer to “place before the meeting” various records
- No direct reference to long term leases, but the long term lease and the partial assignments will be disclosed in the disclosure statement
- The strata is not a party to the lease (because it didn’t exist when the developer entered into the lease with itself) but the lease often purports to impose obligations on the strata (such as overseeing exchanges between owners)
- Many partial assignments state that they are not effective until a copy of the partial assignment is “delivered to the strata corporation”

Additional due diligence for allocations by Owner Developer

- Ask owners to produce their partial assignment documents
- Review the long term lease in the disclosure statement for a “parking plan”
- Is there evidence that the strata has approved exchanges of partial assignments? (ie. a bylaw or minutes)

Consider amending strata plan to designate parking spaces as LCP

- LCP Parking is the easiest to administer and least risky.
- Should consider if LCP designation would conflict with head lease.
- Consult a strata lawyer.



Example of LCP Parking

Alteration Procedures

- Under SB 6, a strata lot owner must obtain the written approval of the strata before making an alteration to common property, including limited common property, or common assets.
- An alteration to common property without the advanced written permission of the strata corporation has been found to be a “fundamental and flagrant” breach of an owner’s duties under the bylaws (Strata Plan VR 390 v. Harvey, 2010 BCSC 715 at para. 23; and Gray v. Strata Plan VR 840 (1994), 41 R.P.R. (2d) 79 (B.C.S.C) (Chambers)).

Alteration Bylaws

- SB6

- Obtain approval before altering common property**

- 6 (1) An owner must obtain the written approval of the strata corporation before making an alteration to common property, including limited common property, or common assets.

- (2) The strata corporation may require as a condition of its approval that the owner agree, in writing, to take responsibility for any expenses relating to the alteration.

Alteration Bylaw Amendments

- Don't change SB 6
- Add a renovation procedure bylaw that adds all the details you want to govern all renovations (elevator bookings, noise, renovation schedules, cleanup, damage etc).
- Use an alteration agreement to impose reasonable conditions on the owner seeking approval (this is where the details about permits, repairs, maintenance, insurance, damage, and indemnity go)
- Don't put terms and conditions in the bylaws that should really be part of an agreement(approval)

Alterations Agreements

- Not really dealt with in the SPA except for SPA 59(3)(c)...

“any agreements under which the owner takes responsibility for expenses relating to alterations to a strata lot, the common property or the common assets”

- Note: it does not refer to “previous owners”... **WHY NOT???**

Privity of Contract

- The doctrine of privity of contract is a common law principle which provides that a contract is not binding on people who are not parties to the contract.
- Indemnity agreements signed by previous owners are not binding on current owners (*Wood v. The Owners, Strata Plan VR 2646* 2018 BCRT 261)

Strata should be less concerned about alterations to strata lots...

- **Repair and maintenance of property by owner**

2 (1) An owner must repair and maintain the owner's strata lot, except for repair and maintenance that is the responsibility of the strata corporation under these bylaws.

(2) An owner who has the use of limited common property must repair and maintain it, except for repair and maintenance that is the responsibility of the strata corporation under these bylaws.

...and more concerned about alterations to Common Property!

Repair and maintenance of property by strata corporation

8 The strata corporation must repair and maintain all of the following:

(c) LCP, but the duty to repair and maintain it is restricted to

(i) repair and maintenance that in the ordinary course of events occurs less often than once a year, and

(ii) the following, no matter how often the repair or maintenance ordinarily occurs:

(A) the structure of a building;

(B) the exterior of a building;

(C) chimneys, stairs, balconies and other things attached to the exterior of a building;

(D) doors, windows and skylights on the exterior of a building or that front on the common property;

(E) fences, railings and similar structures that enclose patios, balconies and yards;

(d) a strata lot in a strata plan that is not a bare land strata plan, but the duty (to repair and maintain it is restricted to

(i) the structure of a building,

(ii) the exterior of a building,

(iii) chimneys, stairs, balconies and other things attached to the exterior of a building,

(iv) doors, windows and skylights on the exterior of a building or that front on the common property, and

(v) fences, railings and similar structures that enclose patios, balconies and yards.

Alteration Bylaw Amendments

- SB 2
 - Add responsibility for all alterations to the strata lot or LCP (whether approved by the council or not)
- SB 8
 - Strata should not be responsible for alterations made to strata lots or LCP (whether approved or not)
- Alterations to CP should include a designation of the CP as LCP
 - Why?

Summary

- Ask owners to produce their partial assignment documents for parking and storage
- Recommend an audit of parking and storage lockers if one has not been done since 2014
- Review the long term lease in the disclosure statement for a “parking plan”
- Is their evidence that the strata has approved exchanges of partial assignments? (ie a bylaw or minutes)
- Consider changing CP parking to LCP
- Implement a simple but detailed alteration agreement
- Keep alteration bylaws simple and put details in a renovation bylaw or the alteration agreement
- Amend bylaws to make owners responsible for previous alterations to the strata lot or the LCP
- Consider changing altered CP to LCP

Questions?

Alex J. Chang

Lesperance Mendes

604-685-1255 / AJC@LMLAW.CA