

In Unit HVAC Installations

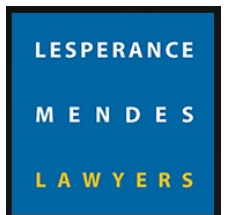
From the Strata Council's Perspective

Presented by

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About Me



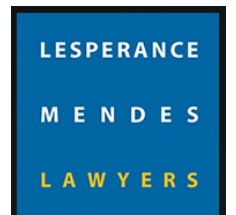
- Practicing since 1994
- Strata Law since 2001
- CLE SPA Practice Manual
- Frequent speaker on strata law
- Litigated in every level of Court in BC including the CRT.

About Lesperance Mendes



**Advice for owners,
From the ground up!**

- Since 1997
- Strata Law
- Construction Law
- Building Defect Claims
- Building Warranty Claims (2-5-10)
- Contaminated Sites
- General Commercial Litigation



Agenda

- Repair and Maintenance under the SPA
- Alterations to Strata Lots and Common Property
- Alteration Agreements
- Amendments to the Strata Plan
- Bylaw Amendments

Council's Standard of Care

- **Alteration to Strata Lots SB 5**

- 5(2)The strata corporation must not unreasonably withhold its approval under subsection (1), but may require as a condition of its approval that the owner agree, in writing, to take responsibility for any expenses relating to the alteration.

- **Council member's standard of care**

- 31 [E]each council member must
 - (a)act honestly and in good faith with a view to the best interests of the strata corporation, and
 - (b)exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.

The Council's Most Important Concern

- Anytime anyone installs something in a strata lot or on common property, the most important questions will be:
 - Who fixes it when it breaks?
 - Who fixes the damage when it causes damage to other parts of the building?
 - Who is responsible for removing and reinstalling it if that is necessary some day?
 - Who pays for all of this nonsense?

Why is the Council Concerned About HVAC installations?

Strata Property Regulation

- **9.1** (1) For the purposes of sections 149 (1) (d) and 152 (b) of the Act, "**fixtures**" means items attached to a building, including floor and wall coverings and electrical and plumbing fixtures, but does not include, if they can be removed without damage to the building, refrigerators, stoves, dishwashers, microwaves, washers, dryers or other items.
- Plus the noise! Some of these things are really noisy!

Fixture or not a Fixture?



Duty to Repair under the Standard Bylaws

- **Standard Bylaw 2**, Repair and maintenance by owner
- **Standard Bylaw 8**, Repair and maintenance by strata corporation

Standard Bylaw 2

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.

Duty to Repair Under The SPA

Repair of property

- 72
- (1) Subject to subsection (2), the strata corporation must repair and maintain common property and common assets.
 - (2) The **strata corporation may, by bylaw**, make an owner responsible for the repair and maintenance of
 - (a) **limited common property** that the owner has a right to use, or
 - (b) common property other than limited common property only if identified in the regulations and subject to prescribed restrictions.
 - (3) The strata corporation may, by bylaw, take responsibility for the repair and maintenance of specified portions of a strata lot.

Preferred Options for HVAC Installations on CP

- If the installation is on LCP, the permission should come with an alteration agreement and a bylaw amendment (belt & suspenders)
- If the installation is on CP, the permission should come with an alteration agreement, a LCP designation, and a bylaw amendment (belt, suspenders and an extra set of pants)
- If you cant do an LCP designation for some reason, then the alteration agreement is your only option (its like a belt, just not the best option)

Why an LCP Designation for an HVAC Installation?

- Alteration agreements are only binding on the people who sign them.
- Bylaw amendments are binding on the current owner.
- Under Reg 6.4 you can pass special levies that are only applicable to the strata lots with the use of the LCP

Sample Alteration Agreement

INDEMNITY AGREEMENT FOR STRATA LOT AND COMMON PROPERTY ALTERATIONS

**The Owners, Strata Plan [specify]
(the “Strata Corporation”)**

[Name of Strata Development]

Assumption of Liability Agreement for Modifications to Strata Lots and Common Property

- (1) I/we, [specify], the owner(s) of strata lot [specify], unit [specify], [address of strata development], [city], British Columbia, in consideration for the strata council's approval of an alteration to our strata lot or the common property of the strata development known as [name of strata development], do hereby agree to the following terms and conditions:
- (2) I/we have read the registered bylaws of the strata corporation (the “Bylaws”).
- (3) I/we will comply with the Bylaws at all times.
- (4) I/we request that the strata council approve the following proposed alteration: [describe

Alteration Agreements: Things to Consider

- List of the specific alterations;
- Requirement for a building and/or other permit(s), if applicable;
- Provision of copies of plans and permits;
- Requirement to have a professional oversight;
- Requirement for insurance on the alterations;
- Requirement that the owner maintain and repair alterations at owner's cost;

Alteration Agreements: Things to Consider

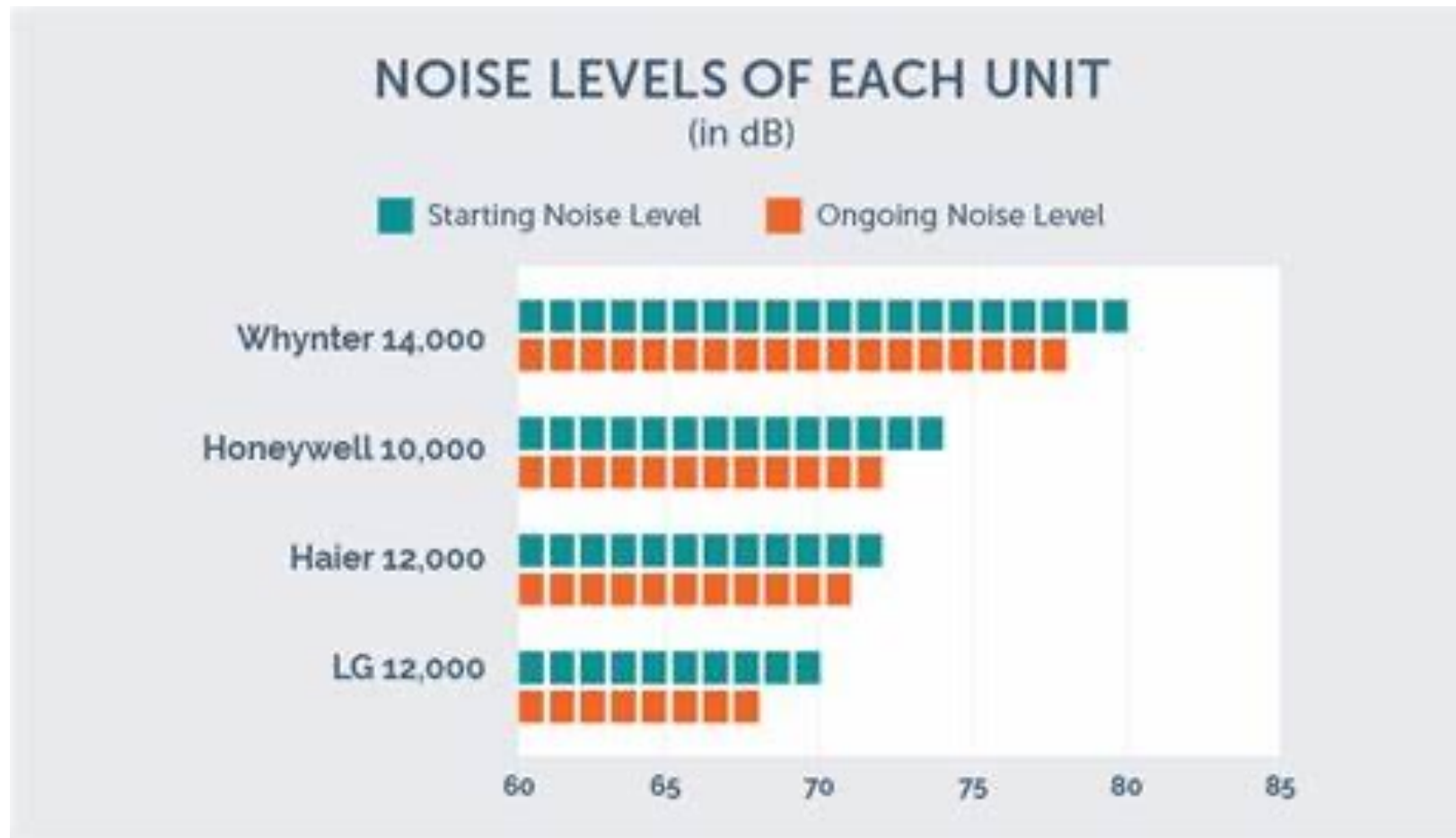
- Owner's responsibility for builders' liens filed in respect of the alteration;
- Requirement for the owner to reimburse the strata corporation if the strata corporation makes the repairs;
- Requirement that the owner “Re and Re” the alterations if the strata corporation needs them to;
- requirement that the owner ensure that the obligations in the agreement are assumed by the purchaser of the strata lot

Anticipate noise complaints

Use of property

- 3** (1)An owner, tenant, occupant or visitor must not use a strata lot, the common property or common assets in a way that
- (a)causes a nuisance or hazard to another person,
 - (b)causes unreasonable noise,
 - (c)unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets or another strata lot,

Anticipate noise complaints



Thank You!

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