



Beyond the Sales Pitch:

Ensuring Transparency and Accountability in BC Strata Developments

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Executive Summary

Strata or condominium ownership has grown to 25% of taxable properties across British Columbia, with there now being 460,000 individual strata units. In several large urban areas, strata homes now account for 50% of all taxable properties. Growth in strata homeownership is expected to continue as land prices increase and efforts are made to reduce the “environmental footprint” of new housing.

Strata title is a complex form of home ownership where some of its problems have been successfully addressed through educational programs but many serious problems remain unresolved because of deficiencies in provincial legislation. VISOA consulted with available MLAs and BC homeowner associations and widely with strata homeowners on Vancouver Island. This report is a product of those consultations and is presented in 2 parts. The first part provides an overview of background, consultations and issues identified. The second part reviews 30 specific issues and proposes a solution for each.

The Strata Property Act (SPA), the Real Estate Development Marketing Act (REDMA) and the Real Estate Services Act (RESA) affect strata homeownership. Although the RESA and the REDMA are relatively recent (2004) creations in response to concerns of the real estate industry, no public review of strata legislation to address homeowner concerns has occurred since 1998. In the meantime, other provinces have moved ahead with legislation to address emerging concerns in strata (or condo) homeownership. In 2003 the BC government recognized there were significant issues with the SPA and committed itself to a review. This review has not occurred.

VISOA has identified many deficiencies in transparency and accountability under current legislation and has categorized them under the topics of:

- A. Strata Governance,
- B. Strata Management Licensees,
- C. Disclosure,
- D. Strata Development Approvals,
- E. Property Taxation, and
- F. Strata Fee Equity.

Ignoring these deficiencies and continuing with the present strata legislation has serious implications, with each carrying a human, financial or political price.

This report demonstrates the scope and magnitude of legislation deficiencies and the need to make BC’s strata legislation more “homeowner friendly”. VISOA is asking that there be a public review of the SPA, REDMA and RESA with a focus on protecting the property rights of strata homeowners. This will require a process of public input including wide consultations with strata homeowners across the province. The transparency and accountability needed in strata legislation should start with the process used to develop it.

Beyond the Sales Pitch: Ensuring Transparency and Accountability in BC Strata Developments

Introduction:

In the 42 years since strata (or condominium) title was introduced in BC, this form of home ownership has grown to 25% of taxable properties across the province. According to data from the BC Assessment Authority, there are 24,000 strata developments in BC, comprising 460,000 individual strata units. In several large urban areas, strata homes already account for 50% of all taxable properties. Growth in strata homeownership is expected to continue as land prices increase and multi-family strata buildings are constructed in an effort to hold down the cost of home ownership. Furthermore, strata homes are now being used as one means of reducing the “environmental footprint” of new housing and this use is expected to grow significantly.

Vancouver Island, with 67,000 strata units in 6,700 strata developments, reflects the growth trend in strata ownership across the province and across the country. VISOA, the Vancouver Island Strata Owners' Association, has helped many strata owners and strata councils address some of the challenges of this complex form of home ownership, but many serious problems remain unresolved because of deficiencies in provincial legislation.

In response to strata owner concerns about present strata legislation, VISOA began consultations in early 2007 directed toward legislation improvement. This report is a product of those consultations and is presented in 2 parts. The first part provides an overview of background, consultations, issues and the need for a public review of strata legislation. The second part reviews specific issues and proposes solutions.

Part 1: Overview

Background:

The provincial legislation at the center of strata owner concerns consists of the Strata Property Act (SPA), the Real Estate Development Marketing Act (REDMA) and the Real Estate Services Act (RESA).

The Real Estate Services Act (RESA) was passed in 2004 and replaced the Real Estate Act. It was intended to enhance consumer confidence in the real estate industry. One way this was to occur was by requiring the licensing of strata managers. The new Act empowered the Real Estate Council to license, educate and discipline all real estate licensees, including strata managers.

The Real Estate Development Marketing Act (REDMA) was also passed in 2004. It was intended to reduce the regulatory burden on developers by providing clearer and more consistent marketing rules relative to RESA. In so doing it requires that deposit moneys from purchasers be placed with regulated professionals who are familiar with trust account responsibilities. The new REDMA also enables developers to pre-sell more developments and make better use of deposit

moneys while requiring the filing of only one form of disclosure agreement document regardless of the nature of development property.

The Strata Property Act (SPA) was passed in 1998 (coming into effect in 2000) to replace the previous Condominium Act passed in 1977. When passed, the new Act was more than twice as long as the preceding Condominium Act. It recognized growth in complexity of strata properties and attempted to come to terms with the legal, regulatory and administrative nature of what is now often called "a fourth level of government". However, the new legislation did not anticipate all the complexities and challenges of this rapidly evolving form of home-ownership and micro-government.

In 2003 the provincial government recognized there were negative implications of the Strata Property Act and made the commitment to review it. In Hansard for November 5, 2003, the Honourable G. Collins, Minister of Finance stated:

" One of the pieces of legislation that is on the workplan to be reviewed is the Strata Property Act. We will be reviewing that in the not too distant future."

The Minister went on to say:

"I've received lots of written submissions, generally from constituents right across the province, with regard to positive but mostly negative implications of their experiences with the Strata Property Act and in some cases their strata councils."

Ten years have elapsed since the Strata Property Act was updated; other provinces have moved forward with legislation to address emerging issues of their strata (or condo) ownership. But in BC, where strata legislation now impacts 25% of properties, serious issues remain to be addressed. The promised review is long overdue.

VISOA's Consultations

Starting in May of 2007 a committee of VISOA Board Members met with individual Vancouver Island MLAs in both political parties. The Committee was able to meet briefly with senior staff in the Ministry of Finance to review the substance of owner concerns about strata legislation and the need for a review. However, in spite of several requests, VISOA has not been able to meet directly with the Minister of Finance to present its case.

Following these meetings, in early 2008 VISOA prepared a 13-point discussion paper that was circulated to its membership and the MLAs it previously met with. The discussion paper was also made publicly available on the VISOA website and circulated to interested homeowner associations on the lower mainland. During February and March a series of publicly advertised meetings open to all strata owners was held (in Courtenay, Nanaimo and Victoria). In addition to the many issues and proposed solutions raised by strata owners at the public meetings, 38 written submissions were received from strata owners and representatives of homeowner associations on the lower mainland.

Outcome of VISOA's Consultations

As a result of these consultations and further research, VISOA has identified many issues and categorized them under the following 6 categories:

- A. **Strata Governance:** The complexities of shared ownership and mutual obligations among individual owners and their corporate body require relevant knowledge of the Strata Property Act and simple, direct and affordable access to due process for enforcing the Act and resolving disputes. Current legislation provides for only cumbersome, intimidating and expensive judicial, arbitration or mediation processes to administer the Act. It effectively indulges irresponsible actions and leaves disputes unresolved.
- B. **Strata Management Licensees:** At the beginning of 2006 it became a legal requirement for a strata manager or strata agent to be licensed by the Real Estate Council under the Real Estate Services Act. After 2 years of experience in the use of "licensed" strata managers it is clear that the licensing requirements are too weak to protect the interests of strata homeowners.
- C. **Disclosure:** Purchasers are not getting all the information they need to make an informed choice when considering a strata property. Some of this information is not even available to the existing owners either because there is no requirement for the strata corporation to maintain it or it is being concealed from them. Furthermore, VISOA has found BC's lack of a requirement for either a financial audit or a reserve fund study to be a striking omission from homeowner protection when compared with legislation in Ontario, Alberta and Washington State.
- D. **Strata Development Approvals & Accountability:** Irregularities have been found in some strata developments. The expense and stress of legal action put individual strata purchasers at a significant disadvantage when seeking redress for unjust actions of large, well-funded developers. This, coupled with weak penalties for non-compliance in the REDMA, the lack of adequate provisions in the SPA to protect homeowners and the lack of provincial government enforcement of the SPA, means that developers are generally not being held to account for actions which, through ignorance, neglect or even fraudulent misrepresentation, victimize strata purchasers.
- E. **Property Taxation:** Some strata corporations are required to contract privately for some services that are provided to other types of residential properties by the municipal government out of local property taxes (eg. garbage pick-up, street cleaning). Where this occurs it means that strata homeowners are paying twice in respect of some services. In some cases it appears reasonable for a municipal government to refuse a specific service to a strata property. In other cases the refusal is questionable.
- F. **Strata Fee Equity:** Most strata corporations are required to apportion their costs to owners on the basis of a formula established at the time the strata plan was created. Some have found the formula to be inequitable in view of diverse types of units in the strata plan, each with significantly different maintenance costs. Often the inequity of the formula could have been reasonably foreseen at the time the development was created but inadequate regulations enabled the formula to be accepted by the registrar. Although

strata owners may later wish to change the formula to improve equity they almost always find the task to be impossible because of the requirement in the Strata Property Act for unanimous consent of all owners.

Part 2 of this report describes 30 specific issues and a solution proposed for each one. Of necessity, several of these proposed solutions would disturb the *status quo*.

Implications of Doing Nothing

Continuing with the present strata legislation has the following implications:

- Dysfunctional strata communities,
- More dreams shattered, particularly for retirees and first-time home buyers, as people become stuck with homeownership issues that they cannot resolve,
- Strata units becoming stigmatized as a form of home ownership,
- Degraded housing stock (in some strata neighborhoods),
- BC seen as a riskier market for home buyers than markets in provinces with “owner friendly” legislation,
- Public disillusionment with consumer protection legislation in BC, and
- Voter resentment.

Each of these implications carries a human, financial or political price.

Where We Go From Here

The purpose of this report is to demonstrate the scope and magnitude of the legislation changes needed by strata homeowners. VISOA is presenting it to the provincial government and asking for a review of strata legislation. The report is also being made available to media and people interested in making BC’s strata legislation more “owner friendly”.

In asking for a review of strata legislation, VISOA is referring to a public review of the SPA, REDMA and RESA with a focus on protecting the property rights of strata homeowners. This will require a process of public input including wide consultations with strata homeowners across the province. The transparency and accountability needed in strata legislation should start with the process used to develop it.

Part 2: Issues and Proposed Solutions

Strata Legislation Issue	Why It Is An Issue	Proposed Solution
A. Strata Governance		
A.1. Lack of reliable information	The complexities of shared ownership and mutual obligations among individual owners and their corporate body require relevant knowledge of the intent of the Strata Property Act. Many and perhaps most disputes in stratas occur because the parties to the dispute lack reliable information on basic requirements of the Strata Property Act (SPA). Strata owners lack an accessible and authoritative source of legislation interpretation to support the operation of strata corporations according to law.	Broaden the mandate, powers, duties and resources of the Homeowner Protection Office to provide a “help line” and interpretive letters on the requirements of the SPA. This would include HPO assumption of responsibility for and expansion of the guides currently provided by the Supt. of Real Estate.
A.2. Dispute resolution	Even where information is not lacking many disputes remain unresolved. Part 10 of the SPA provides for arbitration to resolve disputes but the process is daunting and expensive to the point of being inaccessible to most strata owners. Strata owners require simple, direct and affordable access to due process for enforcing the SPA and resolving disputes. Current legislation provides for only cumbersome, intimidating and expensive judicial, arbitration or mediation processes to administer the SPA. It effectively indulges irresponsible actions and leaves disputes unresolved.	Further to the broadened mandate of the HPO as proposed above, establish a process under the Homeowner Protection Office for strata dispute resolution similar to that used by the Residential Tenancy Branch where: (a) a party to a dispute contacts an Information Officer who contacts the other party to provide information about rights, responsibilities and options under the law, and (b) if the parties still can't reach agreement, either party can apply for a dispute resolution hearing where a minimal filing fee is the only cost to the parties.
A.3. Lack of offences and penalties provision	For non-compliance with the Strata Property Act (SPA) or the regulations by a developer, a strata corporation, an employee of a strata corporation, a member of a strata council or an owner there are very few offence provisions or	Amend the SPA to provide penalties for non-compliance with the SPA with enforcement being the responsibility of: (a) the Superintendent or Real Estate, in

Strata Legislation Issue	Why It Is An Issue	Proposed Solution
(A.3 continued)	penalties. In the absence of offence and penalty provisions in the SPA the only recourse is for an affected owner to sue the offending party. As a result, some owner developers with “deep pockets” are engaged in flagrant violations of the SPA knowing that there is virtually no chance of being sued by strata owners with “empty pockets”. In other cases, there are strata councils, strata employees or licensed strata managers engaged in violations of the Act without fear of being held accountable by strata owners.	the case of a developer and (b) the HPO, in the case of a strata corporation, an employee of the strata corporation, a licensed strata manager or strata owner. These agencies must be allocated the resources needed to perform these new duties.
A.4. Owner demands for meetings and agenda items	Owner demands for special meetings and agenda items at special or general meetings of owners are one way of owners ensuring transparency and accountability in strata operations. Section 43(1) of the SPA requires at least 25% of the strata corporation’s votes to demand, in writing, a special general meeting. Similarly, section 46(2) of the SPA requires at least 25% of the strata corporation’s votes to demand, in writing, that a resolution or other matter be considered at an annual or special general meeting. This 25% threshold is excessive and prevents owners from directly raising important issues for discussion and a vote by owners on the rare occasion when owners meet to consider matters affecting their property. Furthermore, for strata corporations with many absentee owners (eg. recreational properties) the 25% threshold is extremely difficult to achieve.	Amend sections 43(1) and 46(2) of the SPA to reduce the 25% minimum to 10% of the strata corporation’s votes.

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A.5. Small claims actions by strata corporations	Section 171(2) of the SPA requires a ¾ vote at a general meeting of owners to approve any suit by a strata corporation. This requirement fetters the ability of a strata corporation to pursue small debts and collect fines in a timely manner.	Amend section 171 of the SPA to exclude small claims actions from the requirement of a vote by owners.
A.6 Suit by owner against strata corporation	Section 163(2) of the SPA permits an owner to sue the strata corporation. However, many suits by owners are being pursued as small claims actions in the Provincial Court to hold down costs for both parties. However, the Provincial Court has dismissed many of these suits, citing lack of jurisdiction. This means that the matter can only be judged at the much more costly BC Supreme Court.	Amend sections 163 and 164 of the SPA to broaden the power of the Provincial Court to hear matters in dispute between an owner and a strata corporation.
A.7. Building repairs	VISOA has learned of numerous instances where independent experts have found major repairs to common property necessary. However, the work has not been done years after because a ¾ majority vote cannot be obtained to approve the work. This creates an injustice for the minority of owners who do not wish to experience a loss in value of their property due to an absence of repairs. The remedies provided by sections 163 and 164 of the SPA are time consuming and expensive.	Amend the SPA and the Regulation to: (a) give more direction as to when work must be done, and (b) provide a more accessible way for owners to protect property value.
B. Strata Management Licensees		
B.1. One-sided strata management contracts	Under section 39(1)(a) of the SPA a strata council can enter into a strata management contract while a ¾ vote of owners at a general meeting is required to cancel a strata management 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	Amend section 39(1)(a) to: (a) require a strata management contract to contain an expiry date, (b) remove the requirement for a ¾ vote of owners to cancel a strata management contract, and (c) permit the strata council to cancel a

Strata Legislation Issue	Why It Is An Issue	Proposed Solution
<i>(B.1 continued)</i>	upon it. Also, some strata management companies are attempting to coerce strata councils into accepting a contract with no expiry date. Furthermore, the boilerplate agency agreement prepared by a strata agents' association (and held to be copyrighted and not subject to amendment) contains no provision for an expiry date.	strata management contract on 2 months notice, without liability or penalty.
B.2. Policing of licensed strata managers	The Real Estate Council of BC (RECBC) licenses strata managers. Under section 5-1(5.1)(a.1) of its Rules, the RECBC has set standards for strata management contracts that 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 from strata councils while discouraging complaints from individual strata owners. These shortcomings mean that strata owners are not being adequately protected from incompetent, unprofessional or unscrupulous strata management companies who advise, and sometimes control, strata councils. Realtors dominate the membership of the governing Council of the RECBC and there are no Council members representing strata owners. This reflects the fact that strata manager licensing is a very small part of the operations of the Council. The RECBC's Annual Report fails to adequately disclose licensing and complaint statistics on its strata management licensing operations. The RECBC is beyond the reach of the general powers of the Auditor General.	Standards of practice for strata managers need to be established, supported and enforced by a provincial authority that has homeowner protection as its core mandate. The power to license strata managers should be re-located to the Homeowner Protection Office (HPO) which has a mandate focused on homeowner protection. The HPO has a Service Plan and Annual Report that are focused on performance measures, targets and results of benefit to homeowners, including strata owners. The HPO is subject to the accountability of an Auditor General's review. However, only one of the seven members on the HPO Board is arguably a consumer representative. The HPO Board should be expanded to include more consumer representatives, particularly strata homeowners.

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B.3. Standard of care	Licensed strata managers are delegated powers and duties under a contract with a strata corporation. When performing these delegated powers and duties they are not subject to the standard of care under section 31 of the SPA and the requirement to disclose a conflict of interest under section 32 of the SPA, as is a member of a strata council. Where a maintenance firm or contractor and the strata management company have a common business interest, over-billing of the serviced strata corporation has been known to occur.	Amend sections 31 and 32 of the SPA to apply to a licensed strata manager and amend bylaws and rules governing the licensing to require a licensee to disclose its interest in a contract and excuse itself from the evaluation of any contract or tender in which it has an interest.
B.4. Licensing exemptions	Some strata corporations have individuals exercising delegated powers and duties of a strata corporation or strata council. These individuals are exempt from licensing under section 2.1 or 2.17 of the Real Estate Services Regulation but are still paid to exercise these powers. Under this exemption an employee or person with only a part ownership in a unit in several strata developments can operate as a strata manager even though the person has not met the competency test to become licensed.	Amend sections 2.1 and 2.17 to remove the licensing exemption for anyone providing strata management services for compensation.
C. Disclosure		
C.1. Financial reporting standards	Financial reports in many stratas are indecipherable and are not prepared according to the Strata Property Act or any known accounting standards. Licensed strata managers provide some of these reports. As a result, strata councils are unable to make sound financial decisions on behalf of the strata. Furthermore, many strata owners and purchasers are unable to assess the financial position of the subject strata corporation.	Amend the SPA and provide for regulations which set down the details of the basic financial reports required of a strata and how often they are required in a manner that owners and purchasers can understand. These regulations should be developed in consultation with the accounting profession.
C.2. Financial audit	There is no requirement for an independent audit of strata finances even where a strata corporation has a budgets or reserve fund in the hundreds of thousands of dollars. As a result, finances are sometimes poorly managed and there are	Amend the SPA to require an annual independent audit of strata finances by a qualified accounting professional while allowing:

Strata Legislation Issue	Why It Is An Issue	Proposed Solution
<i>(C.2 continued)</i>	several examples where large sums of money have been reported as “missing”. BC lags behind other jurisdictions (e.g. Ontario and Washington State) in requiring an audit of strata or condominium finances. Although audit fees can be costly to owners, the loss of strata funds can be much more costly, particularly in larger stratas with large budgets.	(a) a strata corporation with a small number of units, or (b) a strata corporation in a bare land strata without a common facility or common assets to pass a motion at the AGM, with a ¾ vote, to forego an audit for that year.
C.3. Adequacy of contingency reserve funds (CRF)	The current SPA and regulations require disclosure of the amount of the amount of a CRF but do not require disclosure of any indicator of the cost of replacing or repairing depreciated common assets. Current regulations do permit a depreciation report to be developed but the same regulations actually discourage a strata corporation from maintaining an adequate reserve fund by setting limits in proportion to the operating expenditures of the strata corporation. In a 2006 report the Canadian Condominium Institute found the BC reserve fund requirements to be so weak that it was unable to include BC in its ranking of provinces from strongest to weakest in terms of reserve fund requirements. As a result, a strata owner or prospective buyer in BC is typically unable to fairly judge the financial position of the strata corporation. Furthermore, an inadequate CRF can result in an onerous special levy that a strata owner may be unable to pay.	Amend the SPA to: (a) require a strata corporation to provide a depreciation report periodically (i.e. every 3 to 5 years), and (b) require a strata corporation to have a bylaw establishing a minimum amount of reserve funds based on a schedule of the replacement cost of depreciated assets with the information under both (a) and (b) to be made available to strata owners and prospective strata buyers.
C.4 Information certificates (Form B)	Section 59 of the SPA omits several important items from the information to be disclosed to an owner or purchaser. These items could have a significant effect on the value of the property, particularly when the building is or has been in need of remediation or if the property is not in compliance with the bylaws of the corporation (e.g. unauthorized modification). A prospective purchaser should have access to this information <u>before</u> making the decision to purchase.	Amend section 59 of the SPA or the regulations referred to under section 59(3)(m) to require disclosure of: (a) the Schedule of Unit Entitlements for all units in the strata development, (b) the minutes of all AGMs and strata council meetings <u>held within the past 3 years</u> ,

Strata Legislation Issue	Why It Is An Issue	Proposed Solution
<i>(C.4 continued)</i>		<ul style="list-style-type: none"> (c) any outstanding non-compliance of the strata unit with the bylaws of the strata corporation, (d) deficiencies affecting the common property and which remain unresolved with the developer, (e) work recommended for the common property, whether completed or not, (f) permits issued for repair or renovation of common property, (g) certificates of completion including the scope of actual work completed, (h) most recent certificates for any annual inspections (boiler, electrical, elevator, fire and roof), (i) maintenance schedule for the common property, (j) a statement indicating whether a building has been rain screened or not, and (k) any certificate of pending litigation to which the strata corporation is a party.
C.5. Strata council minutes	<p>Sections 35 and 36 of the SPA require that a strata owner have access to the minutes of strata council meetings. Some strata councils are keeping minutes of “in camera” meetings where decisions are made, which they refuse to disclose to strata owners. Others are omitting important decisions from the minutes of regular strata council meetings. Even though these decisions have a direct effect on an owner’s interest in the common property or common assets, the owner is left “in the dark” on such matters. “Privacy legislation” is often used as an excuse for denying such information to strata owners.</p>	<p>Amend sections 35 and 36 of the SPA and the Strata Property Regulation to clarify what a strata council must record in the minutes and make available to strata owners. These amendments should be sufficiently clear to prevent strata councils and strata managers from abusing privacy legislation as a means of avoiding transparency and accountability.</p>

Strata Legislation Issue	Why It Is An Issue	Proposed Solution
C.6. Access to strata council meetings	The Standard Bylaws under the SPA (section 17(3) & (4)) enable a strata owner to attend council meetings as an observer, with a few specific exceptions where confidentiality is reasonably required. However, a strata corporation can adopt different bylaws and eliminate the ability of an owner to attend a strata council meeting as an observer. This has occurred and has reduced transparency in the operation of the subject strata corporation.	Amend the SPA to include the content of sections 17(3) and 17(4) of the Standard Bylaws to ensure a strata owner is able attend council meetings as an observer, with a few specific exceptions where confidentiality is reasonably required.
C.7. Strata buyer risk reduction	A buyer of a strata unit is entitled to the information on a certificate (Form B) about specific financial and other business of the strata corporation. However, this certificate does not tell the buyer about how the strata corporation conducts its business or about the ethical standards it has set for itself. Some strata buyers have exercised all the due diligence possible for a buyer under the SPA but after moving in have found the strata corporation to be dysfunctional in its operation due to low standards of conduct.	Study the feasibility of establishing a non-profit organization for strata corporations that functions similar to a “better business bureau” by setting high standards for membership and dispute resolution. By checking for membership of the strata corporation in such an organization, a potential strata buyer would reduce his/her risk of buying into a “snake pit”. Furthermore, a strata corporation would be induced to be a member in good standing with such an organization because its strata units would be more attractive to buyers and have stronger market values.
D. Strata development approvals & accountability		
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 important aspects of that phase contradicting representations made by the developer in its disclosure for previous phases. Affected 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/she has reasonably concluded that approval would

Strata Legislation Issue	Why It Is An Issue	Proposed Solution
<i>(D.1 continued)</i>	denied due process in the approval of phased bare land stratas.	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 homebuyer to sue a developer where that homeowner has been defrauded through a misrepresentation in a disclosure statement. Furthermore, it is left up to the strata owner to sue a developer that does not comply with the Strata Property Act. The Superintendent of Real Estate will not get involved as it is beyond the mandate of that office to either ensure developer compliance with the Strata Property Act or invoke a prosecution or penalty for fraudulent misrepresentation under the REDMA. This leaves the empty-pocketed homebuyer in the position of having to sue the deep-pocketed developer to obtain justice. This just doesn't happen. As a result some developers are breaking the law without any accountability.	Amend the REDMA and the SPA to empower the Superintendent to: (a) enforce developer compliance with the Strata Property Act, and (b) initiate an action to fine a developer where a misrepresentation has occurred in a disclosure statement . This would complement and support the solution proposed under item A.3.
D.3 Administrative penalties under the REDMA	Where a developer has been found to be non-compliant under the Real Estate Development Marketing Act (REDMA) that developer can be ordered to pay an “administrative penalty” of up to \$50,000, in the case of a corporation, or up to \$25,000, in the case of an individual. In view of the financial gains to non-compliant developers such “administrative penalties” are pitifully low and are a minor cost of doing business for some developers. Financial gains to a developer through non-compliance under the REDMA can be as great as the financial gains through non-compliance by a person under the Securities Act where an “administrative penalty” of up to \$1 million can be ordered.	Amend section 30(1)(d) of the REDMA to set the maximum “administrative penalty” at \$1 million.

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D.4. 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.5. 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 owner 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 whether the SPA permits the taking on of such responsibility. However, if the taking on of such responsibility is not carefully controlled, a strata corporation could stray from its central purpose under section 3.	Amend section 3 to: (a) clarify which property a strata corporation may maintain other than the common property and common assets, and (b) require that maintenance of such property occur under a contract with the owner of that property with the contract being approved by a ¾ vote of owners at a general meeting.

Strata Legislation Issue	Why It Is An Issue	Proposed Solution
D.6. Definition of common facilities	<p>Section 227 requires that the operating and maintenance costs of “common facilities” in a phased strata plan be apportioned to the strata corporation based on the proportion of all strata units to be developed that it represented by the number of strata units currently developed. This is intended to ensure that the relatively small number of units in the early phases of a development is not carrying the burden of operating costs for “common facilities” built to a capacity for the entire development not yet completed. However, the definition of “common facility” in section 217 does not mention:</p> <ul style="list-style-type: none"> (a) a sewage treatment plant commonly required in a bare land strata, (b) whether the facility must be located within a registered phase or elsewhere, or (c) whether the strata corporation must own the facility. <p>As a result, a developer can exploit this lack of clarity by not applying section 227 to sewage operating and maintenance costs when the plant is either owned by the developer or located in a phase not yet registered even though the plant was a condition of development approval. This means strata owners in the early phases of such developments are paying a significantly higher percentage of costs than is permitted under section 227.</p>	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) irrespective of where the plant is located and or who owns it.

Strata Legislation Issue	Why It Is An Issue	Proposed Solution
D.7 Owner developer control	Where the owner developer holds title to a number of unsold strata units the owner developer controls a block of votes that can be used to elect to the strata council those owners who are least likely to challenge the developer on issues unresolved between the developer and the strata corporation. This block of votes can also be used to ensure that bylaw changes are made to favor the developer. Furthermore, some owner developers actually sit as members of strata councils and fail to comply with section 32 of the SPA by disclosing their conflict of interest on an item of business and abstaining from discussion and voting on the item.	Amend the SPA to: (a) limit the owner developer to one vote when a vote occurs on bylaw changes or strata council elections, (b) prohibit the owner developer from being a proxy for another owner under section 56 of the SPA, and (c) prohibit the owner developer from being a member of the strata council.
D.8 Prevention of conflict of interest	Some owner developers have persuaded some owners to become investors in the strata development. This puts these owners, who are now investors, in a conflict of interest situation where they serve on the strata council when a matter involving the developer comes before the strata council. Where there is no disclosure of the investment interest of these owners, some of them can and do act contrary to section 32 of the SPA. Some have used the lack of an SPA requirement to disclose such information as meaning it is protected from disclosure under the Personal Information and Privacy Act.	Amend section 32 of the SPA to require a developer to disclose the names of investors to ensure the Privacy Act does not prevent strata owners from knowing which owners would be in conflict of interest as a council member. Section 32 should also require an owner who is an investor to make a similar disclosure. Failure to make the required disclosure should be subject to investigation and prosecution by the Superintendent of Real Estate.
D.9 Transfer from owner developer to council	Section 22 of the SPA specifies what an owner developer must deliver to the first elected strata council. However, the section omits important information a strata council needs to exercise the care and diligence of a reasonably prudent person when maintaining the common property and common assets of the strata corporation. Where a developer does not provide this important information the result is significant and unnecessary costs for strata owners.	Amend section 22 to require the developer to deliver “as built” drawings of the location of services as well as warranties, maintenance manuals and maintenance logs for all buildings, plant and equipment forming part of the common property and common assets. Failure to do should be subject to investigation and prosecution by the Superintendent of Real Estate.

Strata Legislation Issue	Why It Is An Issue	Proposed Solution
E. Property taxation		
E.1 Municipal services and mill rates	<p>Many strata corporations are required to contract privately for some services that are provided to other types of residential properties by the municipal government out of local property taxes. Such services include garbage pick-up, street cleaning and snow removal. Where this occurs it means that strata property owners are paying twice in respect of some services. In some cases (e.g. where strata roads are too narrow for municipal garbage trucks) it appears reasonable for a municipal government to refuse a specific service to a strata property. In other cases the refusal is highly questionable.</p>	<p>Amend local government legislation to enable a local government to set a lower mill rate for strata developments in recognition of the lower level of municipal service provided to strata developments. (Similar to proposal by Parksville to UBCM convention in 2002.)</p>
F. Strata fee equity		
F.1. Establishing unit entitlement of strata lot	<p>Under sections 99 and 108 of the SPA an owner’s strata fee or required contribution to the operating fund, contingency reserve fund or special levy is based on the unit entitlement of the owner’s strata lot as a proportion of the total unit entitlement of all strata lots. The unit entitlement of the strata lot is determined by the developer under section 246(3) of the SPA that provides for several options including “habitable area”. Many developers use this option.</p> <p>Strata owners in some strata developments believe “habitable area” to be an unfair basis for determining strata fees and have considered alternative formulae which they believe to be more equitable. Section 100 of the SPA permits a strata corporation to use an alternative formula. However, unanimous consent of all owners is required. It takes only one owner to prevent any such change to the formula. This makes it virtually impossible for a strata corporation to implement an alternative formula.</p>	<p>1. Amend the SPA to permit a strata corporation, <u>by significantly less than a unanimous vote</u>, to use a formula other than the one under section 99 to calculate a strata lot’s share of the contribution to the operating fund, contingency reserve fund or special levy. This amendment should permit:</p> <ul style="list-style-type: none"> (a) apportionment of contributions to a type of strata lot in respect of costs attributable to that type of strata lot, (b) apportionment of contributions to all strata lots in respect of costs attributable to all strata lots, and (c) phasing in the change over a period of 3 to 5 years. <p>2. The Strata Property Regulation should be amended to expand the “different types of</p>

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<i>(F.1 continued)</i>		<p>residential strata lots” beyond those now included in section 11.1.</p> <p>3. The definition of “habitable area” under the Strata Property Regulation should be amended to clarify whether it includes an unfinished basement.</p> <p>4. Amend sections 164 and 246(8) of the SPA to ensure the court has the power to make an order to change a method of apportionment where that method results in significant unfairness. This should include the power to create a section for each type of dwelling in the strata development.</p>
F.2. Creation of sections	<p>Disputes over the equity of strata fees do arise where a strata has diverse types of buildings with diverse maintenance and repair costs. Such disputes can be prevented where sections are created within a strata plan, where each section created is responsible for its own costs but shares in costs common to all sections. Section 191 of the SPA permits a developer to create sections when the development is established but is not required to do so even where diverse types of buildings are being constructed with these types having foreseeable and significant differences in maintenance and repair costs.</p>	<p>Amend the SPA to require the developer to create a section for each type of dwelling in a new strata development.</p>