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BRITISH COLUMBIA
LAW INSTITUTE STRATA PROPERTY LAW PROJECT—PHASE ONE

Backgrounder

Report on Strata Property Law Project: Phase One

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INTRODUCTION

The phase-one report is the culmination of the Strata Property Law Project—Phase One. The BCLI began this project in January 2012. The project's goals were to answer two questions: (1) is the time now ripe to begin a broad-based law-reform project to tackle some of the major long-range legal and policy issues that would need to be addressed in the next generation of strata-property legislation? and (2) if so, what issues should be given priority in such a phase-two law-reform project? The BCLI sought the answers to these questions through initial research and focussed consultation with selected experts in the strata-property field.

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THE STRUCTURE OF THE PHASE ONE REPORT

The phase-one report's primary purpose is to set out the results of the project's initial research and consultation sessions. In addition, it provides some background on strata-property law.

The report has two main chapters. They discuss the origins and development of strata properties and emerging issues for further study.

THE ORIGINS AND DEVELOPMENT OF STRATA PROPERTIES

Introduction

This chapter of the phase-one report begins by defining the term *strata property*. Strata properties have two essential elements: (1) the division of a property into units (which are individually owned) and common elements (which are collectively owned by the unit owners); and (2) a system of democratic governance that allows the owners to manage the property collectively.

In other parts of North America what in British Columbia is called a strata property is called a *condominium*. These are simply two different terms for the same concept. British Columbia's use of *strata property* reflects the historical fact that British Columbia's first statute in this area drew on an Australian model. British Columbia has retained the Australian terminology.

Strata Property Terminology

Strata-property law has its own distinctive terminology. This chapter introduces readers to some of the key terms used in strata-property law.

It begins by discussing *strata plans*, which are legal survey documents. Strata plans delineate the boundaries of individual units and common elements. They must be deposited in the land title office, and must meet a number of detailed requirements to be accepted for deposit.

The individually owned units on the strata plan are called *strata lots*. Each strata lot has its own land title. The parts on a strata plan that are not strata lots are called *common property*. Common property is an open-ended category, which may include things like building lobbies, elevators, and hallways.

The final terms discussed relate to strata-property governance. When a strata plan is deposited in the land title office a *strata corporation* is created. All the owners of strata lots become members of the strata corporation. Major decisions involving the common property must be taken at a strata-corporation level. The strata corporation must meet at least once a year. At this annual general meeting it elects a *strata council* from its members. The strata council manages or oversees the management of day-to-day operations of the strata property.

Legislation in British Columbia

British Columbia has had three generations of strata-property legislation.

In 1966, British Columbia enacted its first strata-property statute, the *Strata Titles Act*. This skeletal act created a basic legal framework for strata properties. Its main purpose was to provide certainty and security for purchasers and lenders in dealing with a novel type of development.

In 1974, British Columbia passed a new *Strata Titles Act*. This 1974 act built on the foundation of the 1966 act. It carried forward, and often enhanced, the 1966 act's rudimentary provisions on land titles, governance, and other basic issues. In an indication of the increasing complexity of strata-property developments, the 1974 act introduced new procedures for phased strata developments and leasehold strata plans.

In 1998, the *Strata Property Act* replaced the 1974 act. Like its predecessor, the *Strata Property Act* built on the foundations of earlier acts. The *Strata Property Act* also achieved its stated goals of reorganizing the legislation along plain-language lines, enhancing consumer protection, and creating greater flexibility. In addition, the act has an array of sophisticated provisions on complex operational issues.

The *Strata Property Act* remains the governing legislation for strata properties in British Columbia. The act has been amended a number of times on a small to medium scale, with the most recent amendments coming in 2009.

EMERGING ISSUES FOR FURTHER STUDY

Introduction

The goal of Phase One of the Strata Property Law Project was to determine whether a phase-two law-reform project was needed. And, if there should be a phase-two project, work in phase one was also meant to identify the major issues for reform.

Given the relative newness of the *Strata Property Act* and the fact that the statute has been frequently amended, it was not clear at the start of phase one whether a further law-reform project would be necessary. The project drew on initial research and focussed consultation to arrive at an answer to this question.

The Consultation Process

During this phase-one project, the BCLI met with lawyers, law professors, strata managers, surveyors, and other experts in the strata-property field. Four consultation sessions were held over the course of phase one. Three of these sessions were held in Vancouver and one was held in Victoria.

Consultation participants each received a memorandum from the BCLI which briefly discussed a series of long-range issues in strata-property law. The consultation sessions featured wide-ranging and free-flowing discussions of the issues raised in the memorandum and other issues raised by consultation participants. The feedback received in these consultation sessions was instrumental in phase one reaching its goals.

Recommendation for a Phase Two Project

The BCLI recommends that it should carry out a phase-two law-reform project on strata-property law. Consultation participants were united in agreeing that there should be a phase-two project. Although views differed on the need for immediate amendments to the *Strata Property Act*, consultation participants agreed that a longer-range study that thoroughly examined a number of major issues would be beneficial.

Issues for Further Study in Phase Two

Consultation participants provided considerable assistance to the BCLI in selecting the issues for reform for a phase-two project. Those issues for reform are:

- **Fundamental changes.** This category is meant to capture major, transformative changes to a strata property. The main characteristics of a fundamental change are a requirement for unanimous (or very high majority) approval of strata-lot owners and a court-based process for cases in which that approval cannot be attained but proceeding with the change is in the best interests of the strata property. The clearest example of a fundamental change is the cancellation of a strata plan and the winding up of a strata corporation. There are concerns, given the aging of first-generation strata properties, that this procedure will need to be invoked more frequently in the future. Consultation participants urged the BCLI to look at more than just dissolution issues. Amending a strata plan, appointing an administrator, and amalgamation of strata corporations may also be considered as part of this subject.
- **Complex stratas.** “Complex strata” is another category devised to embrace a number of areas in strata-property law. The category is primarily concerned with problems associated with mixed-use stratas. Mixed-use stratas are becoming increasingly prevalent in British Columbia. Some of these strata properties have sections or types. Consultation participants advised the BCLI that legislation (and regulations) on sections and types is not as clear as it can be. This has led to numerous operational problems. Another area of concern involves phased strata plans. A thorough review of the legislative frameworks for complex stratas is needed.
- **Leasehold stratas.** In a leasehold strata, the land is subject to a ground lease. The occupants of each strata lot are tenants. The landlord of a leasehold strata must be a legislatively identified public authority. The list of bodies that qualify as public authorities is rather short. Consultation participants recommended a thorough examination of this requirement. Expanding opportunities to create leasehold stratas could contribute positively to housing affordability in British Columbia. Consultation participants also suggested that a number of operational issues for leasehold stratas are worthy of further consideration.
- **Common property.** Common property is one of the fundamental building blocks of the strata concept, but some basic questions about its nature remain difficult to answer. Consultation participants recommended that the BCLI examine some of these basic questions, such as who should own common property and where should it begin and end. They also recommended examining rules on converting strata lots to common property, and *vice versa*.
- **Governance issues.** Governance is a perennial issue for strata properties. Successful strata-property governance requires careful balancing of the rights and obligations of individual strata-lot owners with the interests of the majority of owners in the development. Consultation participants recommended examining selected governance issues for the possibility of legislative reform.

- **Insurance issues.** Difficult issues can be created when one well-developed body of law intersects with another. Some examples of these issues can be found in the last two items on this list. The first item proposes examining how selected insurance-law issues affect strata properties. There are several discrete areas where the legislation may be in need of fine-tuning.
- **Land-title issues.** Finally, there are a number of discrete issues concerning the intersection of strata-property and land-title law that consultation participants suggested the BCLI examine. These issues relate to concerns about subdivision control and strata properties and air-space parcels.

CONCLUSION

Based on our research and the results of our consultation, the BCLI has concluded that a phase-two project on strata-property law should be carried out. There are a number of long-range issues that call for careful analysis and review. Examination of these issues will contribute to the development of the next generation of British Columbia's strata-property legislation.