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Andy Spurling, LL.B.
President
PROLINE MANAGEMENT LTD



Cora D. Wilson, J.D.
cora@wmlg.ca

A Legislative Break Through Permits Termination of a Strata Plan with an 80% Vote

by Cora D. Wilson &
Elaine T. McCormack



Elaine T. McCormack, J.D.
elaine@wmlg.ca

Significant legislative amendments to the *Strata Property Act* (the “Act”) governing the termination of a strata plan and the wind up of a strata corporation with an 80% vote are now law. Since a unanimous resolution was previously required, these amendments are viewed as a “game changer”.

The strata corporation vehicle creates a two tier level of ownership upon the deposit of the strata plan at the land title office. The first tier is strata lot ownership. The registered owner of a strata lot holds title in fee simple. This is the highest level of property ownership under law. The second tier is the collective ownership of the remaining property shown on the strata plan, including the common property. Each owner holds an undivided proportionate interest in the common property. The strata corporation does not own the common property and, as such, it cannot sell strata land. However, the council for the strata corporation is responsible for the governance, administration and management of the common property and common assets – the collective.

Upon dissolution of the strata plan, the strata corporation governance vehicle and the strata lot ownership structure is removed. Thereafter, the owners hold the property comprising the strata plan as tenants in common. This permits the property to be sold or redeveloped without the constraints of the legislation governing strata corporations.

In our experience, dissolution of a strata plan without a liquidator is relatively straight forward, particularly for small strata corporations. However, it will be more complex, costly and time consuming to dissolve a strata plan with a liquidator.

Voluntary winding-up with a liquidator

The appointment of a liquidator is required to terminate the strata plan unless the strata corporation is exempt under the Act. Strata corporations with less than 5 strata lots are exempt. Bare land strata

Cora D. Wilson, J.D., Strata Lawyer, **Wilson McCormack Law Group**. Cora has 30 years of legal experience with a focus on strata law. She deals with development and construction matters, corporate law, remediation, strata & corporate governance, contracts, bylaws, collections, litigation and other strata related matters. She has appeared in all BC Courts and many tribunals.
cora@wmlg.ca

Elaine T. McCormack, J.D. Strata Lawyer, Mediator & Arbitrator, **Wilson McCormack Law Group**. Elaine has over 20 years of strata experience. She deals with strata governance, contracts, bylaws, human rights claims, collections, litigation and other strata related matters. She has appeared in all BC Courts.
elaine@wmlg.ca



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Tel: 1.888.298.7999

250.753.0353

Fax: 250.741.1441

Email: info@stratasphere.com

Website: www.stratasphere.com

Editor: Cora D. Wilson



Assistant Editor: Lesley White

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Cora D. Wilson, J.D.,
Editor of Strata-Sphere
Condominium Services Inc.

EDITORIAL

Complex Stratas, The Team & Planning

Cora D. Wilson, J.D.

The management, administration and governance of a simple Strata Corporation can be complex enough. Adding any one or more of the following can significantly add to the complexity:

- **creation of sections (strata corporation within a strata corporation);**
- **removal of sections (undoing the creation of separate legal entities);**
- **types bylaws (allocation of operating expenses to one type of strata lot eg. monthly gas bills for a fireplace when only some strata lots have gas);**
- **sharing recreational facilities or other amenities by numerous strata corporations;**
- **divergent ownership interests and objectives (eg. commercial vs. residential or owner occupancy vs. tenancy occupancy);**
- **restructuring the strata corporation:**
 - *termination and winding-up where repair and renewal costs do not make financial sense or highest and best use of the land is not being met;*
 - *converting common property into strata lots;*
 - *severing and disposing of common property to developers and others; or*
 - *converting from a common sewer system to municipal services.*

These are only a few of the complexities that can arise when dealing with a strata corporation. These complex issues can require the involvement of numerous qualified professionals including lawyers, architects, engineers, building envelope professionals, land use professionals, surveyors, strata managers, accountants, trustees, developers and others. How is a volunteer layperson council expected to address such matters and where do they go for help?

The first thing to do is to seek a qualified experienced professional capable of assembling and directing a team. The success of a complex project is partially tied to streamlining the process and meeting the objective in a timely, straight line and coordinated fashion. It is important to avoid getting bogged down in complexity. This uncertainty and tail chasing could well result in a failed endeavor.

As one famous person said, "If you don't know where you are going, any road will take you there".

It is important to assemble the team, approve the funding and prepare the plan. The upfront costs will be higher; however, the back end costs at the end of the day will likely be substantially lower. There tends to be understandable objection to hiring the team at the front end. This is one of the major mistakes made by councils. The goal is not to get the cheapest consultants. The goal should be to get an experienced well-oiled team that can achieve the objective in the fastest and most efficient manner. This is the planned structure that maximizes success and controls costs at the end of the day. ■



Termination of a Strata Plan... *continued from page 1*

corporations that meet certain criteria may also be exempt. The strata corporation's assets and liabilities are "wound up" by the liquidator. The title to the strata lots is surrendered by operation of the Act from the owners to the liquidator upon the passage of the winding-up resolution.

The implications of the owners' surrender of title should be thoroughly canvassed with the owners since ownership rights will be suspended upon the passage of the winding-up resolution until the process has been completed. In other words, an owner no longer has the right to sell, mortgage or rent the strata lot. This could create a hardship on some owners if the process takes longer than anticipated to complete. There are many other questions that need to be addressed at this stage.

Once the winding-up resolution is approved, the liquidator steps into the shoes of council. The liquidator will manage the strata corporation during the dissolution process with the objective of bringing operations to an end. The strata corporation is not managed as a going concern. The assets are called in and converted into money, liabilities are paid and disputes are settled. The liquidator is not just an interim manager - he or she is also an officer of the court with special powers. The liquidator's role is comparable to that of a trustee in bankruptcy.

There will be questions regarding how to address expenses once the winding-up resolution has been approved. There will be ongoing strata corporation expenses, as well as strata lot expenses such as property tax. Further, the costs of the liquidator must be considered. These costs could be substantial. The budget should include an amount to cover the liquidator's staff and legal costs. Legal counsel is required to address the various court applications and to provide legal advice throughout. These expenses should be carefully reviewed and approved as part of the winding-up resolution. A healthy contingency is recommended to ensure that funding is sufficient to the end of the process.

Property transfer tax is not payable on the transfer of the strata lots to the liquidator.

However, such tax is payable if for any reason title is returned from the liquidator to the owners. This could happen if, for example, a proposed sale to a third party (developer) does not take place for any reason. The owners should be advised of this possibility no matter how remote.

Upon cancellation of the strata plan, the owners will hold the property as tenants in common. At this point, the strata corporation vehicle is gone and the owners may choose to sell the property to a third party (developer) or redevelop the lands. This restructuring will permit older strata corporations (developed as early as the 1960's) to terminate the strata corporation vehicle and avoid costly repair and renewal work.

The strata corporation should assemble a team, including a lawyer, liquidator and realtor as early as possible to assist with the process. The owners and the liquidator will be required to seek their own independent legal advice regarding matters affecting their interests to avoid conflicts. The following discusses this process in more detail.

Summary of Process and Legislation:

The legislative scheme governing cancellation of the strata plan and winding-up of the strata corporation is governed by Part 16 of the Act. Division 1 addresses voluntary winding-up without a liquidator (ss. 272 – 275), Division 2 addresses voluntary winding-up with a liquidator (ss. 276 – 283) and Division 3 addresses court ordered winding-up (ss. 284 – 289). The process may be summarized as follows:

1. An 80% vote of eligible voters is now required to approve a wind-up resolution to terminate the strata plan with or without a liquidator. The 80% vote replaces the previous requirement for a unanimous vote (s. 1(1), Act).

2. An 80% vote is a vote of all owners in the strata corporation. An "eligible vote" is determined by the strata's Schedule of Voting Rights. It is typically one vote per strata lot. However, mixed-use or non-residential strata corporations may have a different voting power in the Schedule of Voting Rights. The winding-up resolution is approved on a "total-votes" basis, rather than on a "votes-cast" basis.

3. The "winding-up resolution" approves the cancellation of the strata plan, dissolution of the strata corporation, appoints a liquidator, surrenders title to the strata lots and other assets to the liquidator (ss. 1(1), 45, 272(1), 277(1), Act).

4. The legislation was amended to permit persons holding at least 20% of the strata corporation's votes to demand that the strata corporation hold a special general meeting to consider a winding-up resolution. The strata corporation must

hold this meeting within 8 weeks after the demand is given to the strata corporation (s. 43(3.1), Act). This provision permits the owners to address a winding-up resolution if the strata corporation for any reason does not proceed.

5. An extended notice period of at least 4 weeks' written notice of the general meeting of owners is required to address the winding-up resolution (s. 45(1.1), Act). We recommend that 37 days' notice be provided to ensure that the strata corporation is on solid legal ground.

6. Similar to $\frac{3}{4}$ vote resolutions, the specific wording of the proposed winding-up resolution must be attached to the notice of meeting (s.

The voluntary winding-up of a strata corporation with a liquidator involves the following steps:

- 1) preparation of a winding-up resolution;
- 2) preparation of a conversion schedule (the formula for calculating the owners interests as tenants in common);
- 3) obtain directions, a vesting order and other orders from the Supreme Court;
- 4) file the vesting order with the Registrar of the Land Title Office; and,
- 5) terminate contracts, distribute the contingency reserve fund and dispose of the property.

Termination of a Strata Plan... *continued from page 4*

45(3), Act). These resolutions are complex and should be carefully drafted by an experienced strata lawyer.

Winding-up Resolution

7. The winding-up resolution should address the following:

- a. appointment of the liquidator (unless the strata corporation is exempt);
- b. the removal and replacement process for the liquidator;
- c. authorization for the strata corporation to apply to the Supreme Court for appropriate orders and directions (ss. 177(4) & 278.1, Act);
- d. approval of the following:
 - i. cancellation of the strata plan;
 - ii. wind-up and dissolution of the strata corporation;
 - iii. surrender to the liquidator of each owner's interest in the strata property (land, common assets and personal property);
 - iv. the winding-up costs;
 - v. the conversion schedule (interest schedule); and
 - vi. miscellaneous matters.

8. The winding-up resolution is very important. It must be comprehensive and complete. It will take a significant amount of time and effort to properly prepare this resolution.

9. The conversion schedule addresses the conversion of the property from strata ownership to property held by the liquidator for the purpose of rateable distribution to the owners. It lists the name, postal address and interest of each owner and registered charge holder of the land. It may be based on the assessed value of a strata lot or if none, the appraised value approved by $\frac{3}{4}$ vote or the interest on destruction under the *Condominium Act* (s. 273(1)-(3), Act).

10. The conversion schedule could be contentious if an owner is of the view that his or her share of the distribution is unfair. The Supreme Court will address and resolve such issues.

11. The notice of the general meeting must be provided to owners, qualifying tenants and registered chargeholders (mortgagees) (ss. 147 - 148, Act).

12. Title searches for every strata lot should be obtained to ensure that all chargeholders are properly identified and provided with notice. Please note that a charge holder is not restricted to a financial charge holder. Therefore, holders of easements and other charges holders should also be placed on notice.

13. An owner can vote even if the bylaws restrict his or her right to vote (s. 53(2), Act).

14. Although a mortgagee is entitled to notice of the winding-up resolution, it does not have the right to "exercise a strata lot's right to vote" on this resolution. In other words, the owner has the right to vote on the wind-up resolution (s. 54(2), Act).

15. If a person is not available to vote in respect of a strata lot, then the Supreme Court may appoint someone to vote on behalf of that strata lot (s. 58(3), Act).

The Liquidator:

16. The liquidator is appointed in the winding-up resolution by an 80% vote (previously unanimous). This appointment is confirmed by the Supreme Court.

17. The liquidator must meet certain qualifications to act as a receiver or a receiver-manager. For example, a trustee in bankruptcy would qualify (s. 277(1) & (2), Act).

18. The strata corporation ceases to carry on business after the commencement date of the liquidation process, except to the extent that the liquidator considers advisable.

19. The liquidator has a long and detailed list of duties and obligations summarized as follows:

- a. assume control and custody of the property;
- b. use discretion in the realization of assets (including the contingency reserve fund);
- c. address the liabilities;
- d. distribute assets among the creditors and owners;
- e. apply to the Supreme Court to stay proceedings and/or seek directions if liabilities cannot be discharged;
- f. maintain and provide access to records, including financial accounts (ss. 35, 36 & 276.1, Act);
- g. manage or supervise management of the strata corporation (council powers cease on the appointment of the liquidator, unless the liquidator approves their continuance);
- h. provide interim reports and a final report on the liquidation, disposition of assets and payment of taxes as directed by the court or the winding-up resolution of owners;
- i. distribute the assets of the strata corporation to the owners in kind or in money pursuant to a court order; and
- j. miscellaneous duties required to complete the mandate.

Supreme Court

20. Within 30 days of the winding-up resolution, the liquidator must apply to the Supreme Court to confirm the appointment of the liquidator and to vest the property in the liquidator for the purpose of transferring the land and other property and distributing the proceeds as set out in the conversion schedule (s. 279(1), Act).

21. Further, the strata corporation must apply to the Supreme Court for an order confirming the winding-up resolution within 60 days after the resolution is passed (s. 273.1(1), Act).

22. The failure to meet this 60 day time line does not prevent the strata corporation from applying to the Supreme Court and it does not affect the validity of a winding-up resolution (273.1(2), Act). This is a good clarification since 60 days is a tight time frame.

23. The Petition to the Supreme Court to confirm the winding-up resolution must be served on any person affected by the order sought, including the owners and the charge holders identified in the conversion schedule (s. 273.1(3), Act).

... continued on page 6



Termination of a Strata Plan... *continued from page 5*

24. When considering an order to confirm the winding-up resolution, the Supreme Court must consider (273.1(5), Act):

- a. whether the order is in the best interests of the owners;
- b. the probability and extent of significant unfairness to owners or registered chargeholders if the order is confirmed or not confirmed; and
- c. significant confusion and uncertainty to the affairs of the strata corporation or the owners.

25. This test is new and it remains to be seen how it will be interpreted by the Supreme Court.

Application to the Registrar after Supreme Court Order

26. Once the Supreme Court grants appropriate orders, including the vesting order, then the strata corporation must apply to the Registrar of the land title office to cancel the strata plan.

27. The application must attach the following (s. 274 (b), Act):

- a. the court order;
- b. a certificate of the Strata Corporation in the prescribed form stating that the winding-up resolution has been passed, the conversion schedule conforms to the resolution and the strata corporation has no debts other than those held by registered chargeholders;
- c. a reference plan showing the lands;
- d. a document addressing the priority interests of registered chargeholders; and
- e. a document confirming title.

Post Dissolution Requirements

28. Once the Registrar accepts the filed documents, then the strata plan is cancelled, the strata corporation is dissolved and indefeasible title is registered in the name of the liquidator. The registrar only deals with land. The personal property of the strata corporation is vested in the liquidator.

29. The liquidator holds the strata property for the purpose of transferring the land and personal property and distributing the proceeds pursuant to the conversion schedule.

30. The liquidator must obtain a $\frac{3}{4}$ vote of owners at a general meeting before any land or personal property can be transferred. The failure to obtain a $\frac{3}{4}$ vote voids the disposition (s. 282(1), Act).

31. The process is complete once the liquidator sells the land or personal property, distributes the proceeds and completes his or her reporting requirements.

Exemptions from the Supreme Court application:

32. The following strata corporations are exempt from the court order requirement:

- a. a strata corporation with less than 5 strata lots (ss. 273.1(1)(b) and 278.1(1), Act); and
- b. a bare land strata plan if the registrar considers that chargeholders will not be affected by the cancellation (s. 273.4(c)(i), Act).

33. Exempt applicants may apply directly to the Registrar of the Land Title Office to cancel the strata plan and wind up the strata corporation without a liquidator resulting in significant cost savings (s. 273.1, Act).

Conclusion

The team including the strata corporation lawyer, liquidator and realtor should be assembled as early as practically possible during the process to address and minimize any potential pitfalls. What happens if a minority of owners do not support termination? How are allegations of unfair property valuations addressed and resolved? What happens when there is a dispute over the appointment of the liquidator? What happens if an owner does not pay his or her share of the termination costs? There are many other issues and questions that must be addressed. These issues could be small bumps in the road or they could be insurmountable problems resulting in significant delays, frustration, increased costs and complexity.

The 80% vote has made the termination and winding-up process with a liquidator feasible. However, the process could be fraught with political, monetary, personal and legal issues. It will undoubtedly be a worthwhile course of action in appropriate cases. However, the process must be governed and managed properly to minimize the pitfalls and ensure a smooth and successful outcome. ■

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Types Bylaws (discussion) by Tony Gioventu

Under the *Strata Property Act*, strata corporations are permitted to adopt bylaws that designate types of strata lots for exclusive expenses that occur once a year or more frequently and are accounted for as part of the annual budget.

Common examples are a mixture of uses of property where one group of owners does not have use or access to common property or a common asset of the strata corporation. Some common examples:

Townhouses and apartment style buildings where the apartment style building would have an elevator, common hot water, or common heating, and the townhouse owners are not included as users, independently each townhouse owner pays for their own hot water tank and common utility expense. Without a types bylaw or a bylaw that creates sections that allocates the hot water, heating and elevator service cost to the apartment units, the townhouse units may be paying for double services.

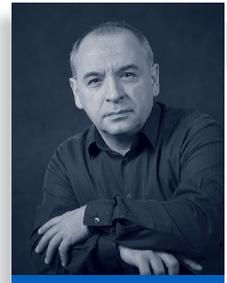
A similar division occurs between commercial properties and residential properties which may also include divisions of utilities for gas or water for high volume commercial properties, or where the commercial properties have no access to residential facilities and services such as hot water, elevators, swimming pools and recreational facilities.

These variances in expenses and liabilities are often addressed through the creations of sections bylaws which result in the creation of a separate section for either a commercial, residential or different type of property. While sections bylaws address both operating and non operating expenses, they often impose a substantial cost and time for the administration and operations of the sections and the strata corporation.

The benefit of types over sections is they reduce the administrative requirements and only require one agency agreement for strata management services. They are limited however to the capacity of what services may be included in the annual budget. With the development of full service life cycle maintenance agreements for electrical/mechanical services, it is possible to absorb most expenses into the annual operating budget; however, structural and integrated service components may remain the responsibility of the strata corporation as a whole.

With the successful function of the Civil Resolution Tribunal, bylaws that now compel commitments or actions will be easier to enforce through the consequences of a Tribunal action. The recent BC Law Institute Consultation on complicated strata corporations addresses the issues of sections and types and acknowledges legislative amendments necessary to make types more effective for strata corporations. My recent experience with types bylaws, indicates there are many inexperienced

Antonio (Tony) Gioventu, is the Executive Director and Strata Property Advisor for the Condominium Home Owners Association of B.C. (CHOA). He brings 27 years of experience in management, real estate development, construction, building operations, and strata property legislation to this position.



Tony Gioventu

volunteers in strata corporations and strata managers who have been writing types bylaws, without understanding the necessity of the condition, “solely applies to the type”. Competent types bylaws may be a valuable solution to sections or to address imbalances in expense and allocations. Consider the basic requirements of a types bylaw and the implications of how such a bylaw might be addressed.

The requirements for types bylaws are as follows:

- 1) **The cost allocations must be associated with the annual operating budget expense.**
- 2) **They must be an exclusive expense to the identified type, if the expense is a utility or service, it must be contracted or metered separately to be exclusive. You cannot apportion.**
- 3) **They must identify the strata lot #'s of the types.**
- 4) **They must be approved by a separate ¾ vote of both residential and non residential strata lots.**
- 5) **The financial formula to address surplus and deficit issues must be identified as the Act is silent on how to address budget line items for types.**

Sample types bylaw (example residential and non residential)

Non residential are strata lots 1-4

Residential are strata lots 5-110

- 1.1 **Strata lots (5-110) known as the residential strata lots, are deemed to be a type for the purpose of the following annual operating budget expense items:**
 - a) **Elevator maintenance and operations**
 - b) **Hot water boiler and circulation pumps operation and maintenance**
 - c) **Gas utility for hot water and in suite fireplaces**
- 1.2 **Strata lots (5-110) are required to engage a full service lifetime replacement contract for those components that may be include in annual servicing and renewal and expensed in the annual budget.**
- 1.3 **Strata lots 5-110 shall contribute to the common types expenses based on the aggregate unit entitlement of strata lots 5-110. Any surplus funds of the types shall be carried over to the next fiscal year to offset the revenue requirements for the types, and any deficit incurred by the types allocations shall be carried over to the next fiscal year budget to be paid by the type. ■**



"Every Strata should have a Copy!"

Written by **Cora D. Wilson, J.D.,**
Strata Lawyer
& Tony Gioventu
Edited by
Elaine T. McCormack, J.D.

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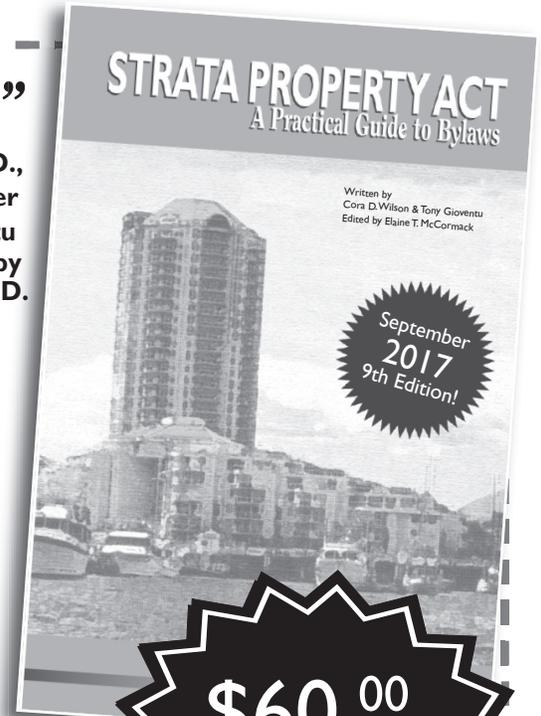
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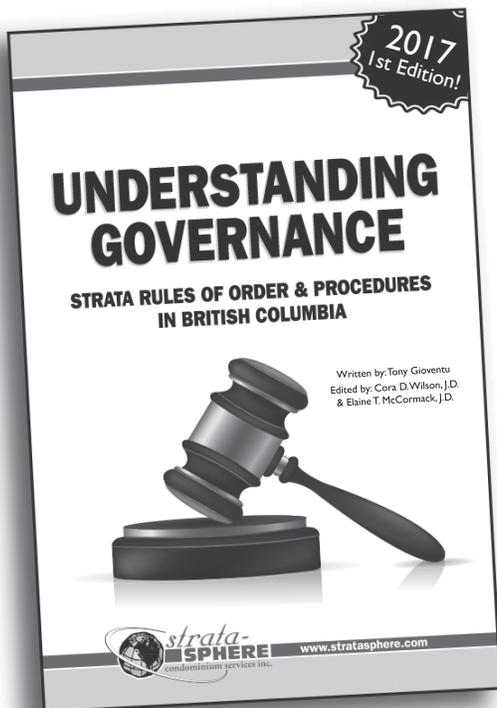
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HOW SECTIONS WORK

Gerry Fanaken (former CEO)

VANCOUVER CONDOMINIUM SERVICES INC.



Gerry Fanaken

Gerry Fanaken is a 40 year condo owner, former CEO of Vancouver Condominium Services Inc. and Author of Understanding the Condominium Concept: An Insightful Guide to the Strata Property Act.

Under the previous *Condominium Act* the authority for “sections” (i.e. residential and non residential) was prescribed at Section 51 of the legislation and was relatively minimal. Under the *Strata Property Act*, the authority and protocols for “sections” are contained in a distinct PART of the legislation. This clearly reflects the importance of the concept and the fact that many more strata corporations are being created with “sections”. The term is defined as: “when used in reference to a strata corporation means a section of the strata corporation created under Section 192 or 193”. A section is sometimes described by practitioners as “a strata corporation within a strata corporation”. That may be a bit of an oversimplification but it does illustrate the point.

Section 190 of the Act applies to a **strata corporation with sections**. It establishes clearly that the provisions of the *Strata Property Act* apply to any strata corporation that has sections. In other words, merely because there is a section in a strata corporation (a strata within a strata) it does not mean that that section is exempt from the legislation. It is in fact bound by all the requirements of the statute and the Regulations. Subsection (2) goes on to make it absolutely clear that if there is any “conflict” between PART 11 and any other PART of the Act, “the provision of this PART prevails”.

The purpose of having sections in a strata corporation is to recognize that there may be architectural differences amongst the strata lots, or that there may be different ownership objectives. Such differences may require entirely divergent operational models and/or budgeting and financial philosophies. Without sections, strata corporations that are composed of mixed ownership might well bog down and become dysfunctional. The idea, therefore, of creating “a strata corporation within a strata corporation” is sound, although it must always be remembered that there is still only one strata corporation even where sections are created. Because the concept is relatively new, a number of legal disputes have arisen in recent years and, no doubt, the outcome of such disputes and court decisions will lead to amendments to the legislation.

Section 191, **Sections allowed**, establishes that a strata corporation may have three different kinds of sections. Importantly, the wording is very clear that the sections can be created “only for the purpose of representing the different interests”. (Underlines added.) Note that the Act does not say for the purpose of controlling the different interests. That said, the provisions of Section 194 (see below) are seemingly at odds with this Section. In other words, a section does not have the similar authority of a strata corporation: it is there only to have a voice in respect of its own unique interest.

The three allowable sections are:

- Residential and non-residential
- Non-residential lots, if the use of the lots is for “significantly different purposes”
- Different “types” of residential lots

Different “types” of residential strata lots is defined in Regulation 11.1

Different types of residential strata lots for the purpose of creating sections.

They are:

- Apartment-style
- Townhouse-style
- Detached houses

It is important to note that “types” of strata lots is limited to residential strata lots. There is no equivalent provision in the Act or the Regulation that speaks to “types” of non-residential lots. The only recognition that non-residential strata lots might be different from each other is the expression at 191(1)(b) of “significantly different purposes”. As a general rule, the term non-residential connotes commercial use. For example business offices, stores, hotels and so on. Some non-residential strata lots,

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however, exist as non-commercial entities, i.e. a church, mosque or a temple, or a school or a non-profit organization such as a community centre. The legislators appeared alive to this fact and avoided the use of the term “commercial strata lots” and instead chose the term “non-residential strata lots”. The legislators, however, did not go beyond this point to then allow or define non-residential lots as “types”, as they did for residential strata lots. If that had been their wish, they would have said so: the absence of prescription similar to what was permitted for residential lots is a clear indication that non-residential “types” of strata lots was not contemplated by the legislators.

More often than not, sections are created by the developer when the strata corporation is first conceived and built. Section 192, **Creation of sections by owner developer**, authorizes the developer to create sections and, if so, those sections must be filed in the land title office as part of the strata plan, specifically as a registered bylaw. At that time any resolutions that designate limited common property (see Section 74) for any strata lots in a section must also be filed. Note that it is not mandatory that the developer create and file separate sections even though the strata corporation might be constructed with one or more aspects as set out in Section 191. It is only an option for the developer to consider. It appears from some litigation over the years that developers sometimes overlook the option and, as a result, strata corporations exist without sections which may have been beneficial. The Act, however, allows for the creation of sections by the subsequent owners if they so choose.

Section 193 **Creation or cancellation of sections by strata corporation** gives the authority to the owners to create or cancel sections. This requires the passing of resolutions at an AGM or SGM. As in the case of the developer creating sections, if a strata corporation wishes to create sections it must do so by way of amending its bylaws. This requires a ¾ vote although two votes are actually required: one by a ¾ vote of the eligible voters in the proposed section and the second by a ¾ vote of all eligible voters of the strata corporation. This protocol must be followed to create a new section and also to cancel an existing section (Section 193 also prescribes the process for creating or removing a designation of limited common property within a section.) It should be noted and remembered that, when a section is formed by creating a bylaw, that bylaw must contain considerably more detail than just a

simple statement that a section is formed. The bylaw should contain governance protocols, etc.

Readers who are interested in the creation of sections are directed to *Chow v. Strata Plan LMS-1277* wherein the Supreme Court of British Columbia ordered the strata corporation to have sections, one representing the 33 apartment-style strata lots and the second representing the 17 townhouse-style strata lots. In this case, the apartment building was a leaky condo but the townhouses were not. The strata council attempted to raise funds to repair the apartment building by a special levy on all the owners including the townhouses. Of course the townhouse owners were not in agreement and successfully applied to the court for relief. It is clear, therefore, that the creation of sections can be done not only by the owner developer or the subsequent owners but also by order of the court.

Once a section is created, the strata corporation remains responsible for the affairs of the strata corporation even though some powers and duties are placed with the section. Section 194 **Powers and duties** of section make it clear that the strata corporation “retains its powers and duties” but the new section then is given authority to have powers and duties for the administration of the section. These include:

- **Its own budget and strata fees**
- **Its own operating fund and contingency reserve fund**
- **The ability to litigate**
- **The authority to acquire and dispose of land**
- **The authority to enforce bylaws and rules (see Section 197)**

There are limitations that attach to the above: the section cannot litigate or enter into contracts in the name of, or on behalf of, the strata corporation. If it does (wrongly) the strata corporation has no consequential liability. The section can also obtain insurance for “perils” not included in the strata corporation’s program or for excess amounts. All of the provisions in respect of Arbitration (see PART 10: Division 4) apply to a section.

Given that the authority for sections as provided for at Section 191 is “only for the purpose of representing the different interests...” (underline added) the very wide scope of authority granted at Section 194 seems inconsistent with the basic premise.

Strata corporations have numerous responsibilities and limitations. For
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example Sections 35 and 36 in respect of records and access to them are very prescriptive and onerous. Sections 83 to 85 Work orders require specific performance of the strata corporation. The new Section 94 Depreciation report is significantly onerous on the strata corporation. Are sections to comply with these prescriptions? There is no specific wording in PART 11 to address this question. At Section 111 of the Act, the strata corporation has the authority to borrow money, yet a section is not given this same latitude, notwithstanding the provision at 194(2)(a) to have a budget and an operating fund and a contingency reserve fund. There are other examples of this disparity between a strata corporation and a section. It is unknown if the legislators intended for these differences between a strata corporation and a section. It is unknown if the legislators intended for these differences to exist or simply overlooked them, and yet Section 190 says that the provisions of the *Strata Property Act* apply to strata corporations with sections.

Although the *Strata Property Act* does not use the term “split budgets,” the industry does use it, or a similar description, to illustrate how common expenses are to be allocated as between the strata corporation and one or more sections within the corporation. Section 195, **Expenses of section**, requires that expenses belonging solely to a section are to be paid only by that section. For example, a residential strata corporation could be composed of an apartment building and townhouses, i.e.

two sections. Expenses such as insurance, landscaping, management would belong to the strata corporation as a whole and all owners would contribute through their strata fees (based on the total unit entitlement) in the normal fashion. The apartment building would likely have an elevator and an enterphone device. The expenses for these two components would be paid for by only the apartment strata lot owners, using the unit entitlement formula of just the apartment strata lots. The total strata fees paid by the owners (both sections) therefore would be the aggregate of the various “split budget” components. Section 195 overlooks how revenues (apart from strata fees) are to be shared so it is up to the strata council when preparing annual budgets to incorporate the principle of Section 195 and also “split” the revenues appropriately. For example, the apartment building section might have rental parking stalls for use by the apartment strata lot owners. That revenue would accrue solely to the apartment budget. Other revenue items (interest, fines, etc.) would have to be analyzed on a line by line basis to determine how they are to be split. Section 195 is also subject to Regulations 11.2 and 11.3. ■

Gerry Fanaken is a retired strata property manager and the author of Understanding the Condominium Concept: An Insightful Guide to the Strata Property Act. The above article is an excerpt from his book. Mr. Fanaken does not purport to offer legal advice or opinion on the topic and urges strata councils to retain competent professional advice from a lawyer.



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Cancelling Sections

Elaine T. McCormack, J.D. Strata Lawyer

WILSON MCCORMACK LAW GROUP

The most complicated strata corporations have “sections”. Sections are separate legal entities created by strata bylaw. Bylaws creating sections may be filed in the land title office while the developer is the sole owner of the complex, or passed by the owners at a general meeting and filed by council. Sometimes the complications of running a strata corporation with sections are not worth the benefits. This article provides some insight into the process of cancelling sections. Like cancelling a strata corporation and selling the land to a developer, the legislation provides a basis for how to “cancel” the legal entity, but it is important to take further steps during the process to make sure that the interests of the owners are protected.

As cancelling sections is becoming a common topic in the strata community, I have written this article to explain some basic information about sections and to outline matters that need to be addressed in order to properly cancel sections.

Different sections can be created to recognize different structures and uses of the strata lots in the complex. For instance, owners of residential and nonresidential strata lots can each create sections, as well as owners of nonresidential strata lots used for significantly different purposes. Different types of residential strata lots, such as apartment style, townhouse style and detached houses can each form their own sections.

The main reason to have sections is that doing so allows for a certain amount of independent decision-making and financial separation. For instance, owners within a section have their own section executive and can vote on and file bylaws for matters that relate solely to the section. Sections also have annual and special general meetings and vote on their own yearly budget. Sections establish their own operating fund and contingency reserve fund for common expenses of the section, including expenses relating to limited common property designated for the exclusive use of all strata lots in the section. In addition, the strata corporation must also be properly governed.

For some strata complexes, the added time and expense involved in having sections outweighs the benefits. Having sections means extended administrative time, extra expenses, and more complicated governance. For instance, if the complex is professionally managed, each section must enter into a separate management agreement. It can be difficult for those individuals that serve as both council members and section executive members to make sure that they are separating out the financial and legal obligations of each entity correctly. For example, sometimes matters that should be dealt with at a section executive meeting are dealt with at a council meeting.

In developing a process to cancel sections, I considered section 193 of the *Strata Property Act*, which provides as follows:

Creation or cancellation of sections by strata corporation

- 193** (1) To create or cancel sections, the strata corporation must hold an annual or special general meeting to consider the creation or cancellation.
- (2) The notice of meeting must include
- (a) a resolution to amend the bylaws to provide for either the creation and administration of each

Elaine T. McCormack, J.D., Strata Lawyer, Mediator & Arbitrator, **Wilson McCormack Law Group**. Elaine has over 20 years of strata experience. She deals with strata governance, contracts, bylaws, human rights claims, collections, litigation and other strata related matters. She has appeared in all BC Courts. elaine@wmlg.ca



Elaine T. McCormack, J.D.
Strata Lawyer

- section or the cancellation of the sections, and
- (b) any resolutions to designate limited common property, in accordance with section 74, for the exclusive use of all the strata lots in a section or to remove a designation in accordance with section 75.
- (3) The resolution referred to in subsection(2) (a) must be passed
- (a) by a 3/4 vote by the eligible voters in the proposed or existing section, and
- (b) by a 3/4 vote by all the eligible voters in the strata corporation.
- (4) On the filing in the land title office of a bylaw amendment creating a section, a section is created bearing the name “Section [number of section] of [name of strata corporation]”.
- (5) On the creation of a section the registrar may establish a general index for the section.

As a result, the guidance given in the *Strata Property Act* regarding cancelling sections is limited to amending the bylaws and potentially re-considering designations of limited common property. Drafting the appropriate resolutions, however, is only one of many tasks that need to be accomplished in order to properly cancel sections.

The cancellation of sections involves transferring the assets and liabilities of each section to the strata corporation. As a result, each section should enter into an agreement (referred to as a “Succession Agreement”) with the strata corporation. The Succession Agreement carefully sets out the process and timing for transferring the assets and liabilities of the section to the strata corporation. Examples of assets that need to be transferred are the operating fund, contingency reserve fund and monies owing to the section, such as strata fees and special levies. An example of a liability that needs to be paid prior to the cancellation of the section or transferred to the strata corporation is a repair expenses incurred by the section. A section may have other legal obligations, such as obligations to pay a service provider under an agreement, and those obligations need to be transferred to the strata corporation or terminated.

Strata corporations that have bylaws creating sections but do not actually run separate sections may not have an operating account, contingency reserve account or have incurred liabilities. If a sectioned strata corporation has never set up the governance of the sections, the documentation to cancel them may be simplified.

Those council and section executive members who find that having sections no longer serves the purposes of their strata community should consider retaining legal counsel to advise on the pros and cons of continuing with sections. Incurring the one-time cost involved in cancelling sections may be more attractive than incurring the long term increased administrative time and costs of having sections. ■

Relationship Status? It's Complicated

Andy Spurling, LL.B.
President

PROLINE MANAGEMENT LTD



Andy Spurling, LL.B.

As a property management company, we assist complex strata corporations in many different forms. The most common are sections, types and mixed use strata corporations, whose various technical machinations are discussed at length in other articles in this issue. Others take the form of multiple strata corporations linked by a common entity, such as a building scheme, easements for shared amenities, community amenity agreements or formal societies under the *Societies Act*. In every case, there are unique challenges from a property management perspective as there are additional entities and stakeholders that are involved, additional accounting and administrative requirements, more meetings, and more complex and sometimes controversial decision-making processes. In addition, the technical realities of managing complex strata corporations and arrangements often come into direct conflict with community sensibilities and can create conflict where none need exist. In this article, I will explore some of the basic challenges faced by sectioned strata communities from a management perspective.

The management of types and mixed-use strata communities provides very little additional challenge to the strata manager. In types, there is additional accounting support required in preparing annual budgets and ensuring proper allocations of expenses between the types. For mixed-use buildings, it is important to ensure that both commercial and residential strata lots approve bylaw changes. For the most part, however, as long as representatives from the different types of uses are involved on the strata council, the interests of all are easily presented and discussed and frictions can be minimized. The additional management that is required is minimal and generally creates no additional costs for these types of strata corporations.

For sectioned strata corporation communities, there can be significant additional costs and challenges, as well as major conflicts and confusion that can arise based on the way each is structured. While the technical legal situation of sectioned strata corporations is now well understood in the legal and management community, in our experience many sectioned strata corporations have not been and are not being set up in a way that results in the stated benefits of sectioned strata corporations. In many cases, the additional administrative and accounting costs incurred by sectioned strata corporations can add up quickly and greatly reduce or eliminate perceived advantages of savings on operational or future capital costs. I will attempt to illustrate some of the unique issues for sectioned strata corporations by describing two different set ups of “theoretical” sectioned strata corporations to show how they can work reasonably well and not well at all.

Andy Spurling, is the President of Proline Management Ltd. In this role, Andy is engaging the Proline team to transform the property management industry through leadership, innovation and change. Andy oversees the operations of the company's 44 employees in three Vancouver Island locations servicing just under 10,000 units. Andy's goal is to help the many individual communities in their portfolio be sought after places to live and continue to work hard at increasing job satisfaction for Proline's many employees.

The first sectioned strata corporation has townhouses and a tower of apartment-style units. When the strata corporation was set up, the strata plan and bylaws clearly delineated the sections and there is virtually no sharing of amenities and no sharing of physical structure. The expenses of the strata corporation are limited to insurance, water consumption costs and maintenance for a common irrigation system, and costs related to a shared roadway that serves as the entrance and exit to the property. All other costs, such as utilities, maintenance, cleaning and garbage removal are all contracted separately and paid separately. Given the small scope of responsibility for the strata corporation, the additional accounting and administrative requirements are not significant, as the strata corporation strata council meets only once a year and the annual general meeting is easily scheduled with the annual meetings of the additional sections. In this simple scenario, administrative costs of approximately \$5,000.00 per year are incurred for the base level of management required for the strata corporation. In this case the Townhouse and Condo sections each operate as their own strata corporation and make all of their own decisions with respect to their Section. While administrative costs are higher with the three entities involved, the different needs and priorities of owners in each Section can be realized and the tricky issue of capital replacement items that affect only one type of strata lot are avoided. The extra \$85.00 a year paid by each strata lot to run a separate entity makes sense in the short term and the long run.

The second sectioned strata corporation presents a much bigger challenge. It has a commercial section and a residential section in a low rise condo building with ground level commercial strata lots at the front of the building and residential strata lots in the remainder of the building. The ground floor commercial units have access to the main common property hallway on the ground floor, the garbage rooms, life safety systems, and parkade access are all shared, there is only one water meter for the entire building, and the two elevators in the building are used mainly by residential section owners, but can be used by commercial section owners to access the parkade from the common hallway. The building envelope protects all units and the bylaws make

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Relationship Status... *continued from page 13*

the strata corporation responsible for its maintenance. In this case, complexities abound.

With so many areas shared between the two sections, the vast majority of costs fall to the strata corporation, with each section managing a small pool of expenses. Conflicts are created when a restaurant and a drycleaner take up two of the commercial strata lots and the strata corporation must divide water consumption costs between units based on unit entitlement with only one water meter. The commercial section resents contributing to elevator costs because they see them as costs of the residential section that they should not have to share. The residential owners resent their increases in garbage costs as the organics and recycling bins in the shared garbage room are being consistently filled by the commercial strata lots, with the residential owners bearing the majority of those costs and "subsidizing their businesses!". These frustrations create additional problems when a special assessment is required to replace failed window assemblies in the building and the commercial strata lot owners oppose the resolution en masse and thereby defeat the ¾ vote. Oh, and nobody on the strata council of the strata corporation will agree on what is an operating expense and what is a contingency reserve fund expense as each looks to push any strata corporation expenses on to the other section.

The irony in this case is twofold. First, the increased administrative costs of operating this type of strata corporation as a sectioned strata corporation outweighs the savings on operational items and the existence of the sections has created factions that can work against each other on issues that affect the whole strata community. In this case, each entity required significant management, accounting and administrative time resulting in administrative costs that were three times what they would be as one entity. Second, a major advantage of sections over types, which is the avoidance of capital replacement costs of the other section, is almost entirely eliminated based on the set up of the strata corporation. With nearly 70% of a strata corporation's capital replacement costs being attributable to the building envelope, the additional short term costs incurred by sectioned stratas such as these will often bypass any capital

replacement savings they might enjoy in the future. In one analysis we did, the additional short term costs of a sectioned strata corporation operating as types resulted in costs that were 50% of what they would be over a 30 year period as a section. So, while the townhouse owners in that case would contribute to elevator replacement costs, their overall savings greatly exceeded this amount, particularly as the envelope systems for each type of unit were identical in age and construction.

Unfortunately, many strata communities that would be better served as types are created as sectioned strata corporations for a variety of reasons. Many sections were created with little understanding of their technical requirements and those strata communities are working with managers in attempts to move forward in the most productive ways. In some cases, these sectioned strata corporations have undertaken a financial, legal and strategic analysis and made the decision to move from sections to types and to operate as one community and work to build consensus and community. As in any relationship, communication and shared interests and accountability will often have a better long term result than creating conflict and working against each other. ■



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