

CHAPTER TWENTY-TWO: STRATA LAW

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CHAPTER TWENTY-TWO: STRATA LAW

This Manual is intended for informational purposes only and does not constitute legal advice or an opinion on any issue. Nothing herein creates a solicitor-client relationship. All information in this Manual is of a general and summary nature that is subject to exceptions, different interpretations of the law by courts, and changes to the law from time to time. LSLAP and all persons involved in writing and editing this Manual provide no representations or warranties whatsoever as to the accuracy of, and disclaim all liability and responsibility for, the contents of this Manual. **Persons reading this Manual should always seek independent legal advice particular to their circumstances.**

This chapter was written with frequent reference to the *British Columbia Strata Property Practice Manual*. Learn more by visiting: <https://www.cle.bc.ca/bc-strata-property-pm/>

I. INTRODUCTION

In a strata development, owners own their individual strata lots. As a strata corporation, owners also collectively own the strata corporation's common property and assets. This blend of individual and common ownership has led to a wide-reaching legal framework that governs the relationship between owners in a strata corporation.

The popularity of strata developments continues to rise in British Columbia. The benefits of living in strata housing are easy to understand. First, it allows people and families that own strata units to have a more direct involvement in decision-making than they otherwise would in a traditional apartment complex or shared living space. The rules under which strata developments operate also provide a great deal of flexibility. To be discussed in this chapter, strata owners and strata council can, with many important exceptions, enact bylaws separate from the legislation governing them to create a living environment that best suits the owners' interests and lifestyle. Finally, the sharing of common property in a strata development can create a strong sense of community, giving residents more opportunities to develop relationships with their neighbours.

Living in strata housing, however, also comes with its legal challenges. Due to its self-governed nature, disagreements in various aspects of strata living commonly arise. Many of these disagreements and challenges are resolved between parties without the need for legal action, but many also cannot be decided between disputing parties, leaving the courts to make decisions on strata disputes on an ongoing basis. Ever since its 2016 introduction as Canada's first online administrative tribunal, the Civil Resolution Tribunal ("CRT") has decided thousands of strata property matters, providing more accessible dispute resolution options for strata matters than traditional court proceedings.

The purpose of this chapter is to give an overview of the current state of strata property law in British Columbia. This chapter can be broken down into three large sections that are then further divided into more specific areas of strata law. Sections 3 – 5 give an overview of what a strata development is, including details on the strata plan and the concept of common property. Sections 6 – 10 give details on the governance of a strata corporation, which includes its finances, bylaws, and rules. Sections 11 – 14 discuss common topics in strata living, including insurance issues and the duty to repair and maintain. Finally, sections 15 and 16 overview dispute resolution in a strata, including where the Civil Resolution Tribunal or the courts are involved.

II. GOVERNING LEGISLATION

Strata Property Act, SBC 1998, c 43 [SPA]

Strata Property Regulation, BC Reg 116/2023 [SPR]

Business Corporations Act, SBC 2002, c 57

Real Estate Development Marketing Act, SBC 2004, c 41 [REDMA]

Land Title Act, RSBC 1996, c 250 [LTA]

Residential Tenancy Act, SBC 2002, c 78 [RTA]

Human Rights Code, RSBC 1996, c 210 [HRC]

Real Estate Services Act, S.B.C. 2004, c. 42 [RESA]

Real Estate Services Rules, B.C. Reg. 209/2021 [RESR]

Real Estate Services Regulation, B.C. Reg. 506/2004 [RESR]

Personal Information Protection Act, S.B.C. 2003, c. 63 [PIPA]

Privacy Act, R.S.B.C. 1996, c. 373 [PA]

III. The Strata Concept

A. The Strata Property Act

The [Strata Property Act, SBC 1998, c 43](#) [SPA] is the piece of legislation that governs strata housing in British Columbia.

The sections of the SPA are divided into 17 thematic Parts. The following chart roughly summarizes the kinds of provisions found in each of the Parts:

No.	Part Title	Provisions Contained
1	Definitions and Interpretation	Definitions of terms that are given specific meanings in this Act
2	The Strata Corporation	Basic provisions about the establishment, responsibilities and governance of a strata corporation
3	The Owner Developer	Responsibilities of the owner developer towards a newly established strata corporation, such as holding the first annual general meeting at which the first strata council is elected
4	Strata Corporation Governance	Strata councils; contracts made on behalf of the strata corporation; annual and special general meetings; information the strata corporation must give upon request
5	Property	Provisions relating to property ownership, such as strata lot boundaries and common property
6	Finances	Strata corporation budget and finances, and the owners' obligation to contribute
7	Bylaws and Rules	Enactment, amendment, and enforcement of strata bylaws and rules
8	Rentals	Provisions governing strata lot owners who rent their unit to tenants
9	Insurance	A strata corporation's obligation to obtain property insurance
10	Legal Proceedings and Dispute Resolution	Lawsuits by or against a strata corporation
11	Sections	Creation, administration, and cancellation of strata corporation sections
12	Leasehold Strata Plans	Applies to strata plans situated on land leased from a government body or public authority
13	Phased Strata Plans	Applies to strata plans where the strata development is constructed in phases
14	Land Titles	Relates to a strata corporation depositing strata plans in the Land Title Office
15	Strata Plan Amendment and Amalgamation	Relates to a strata corporation amending its strata plans
16	Cancellation of Strata Plan and Winding Up of Strata Corporation	Governs the dissolution of a strata corporation
17	General	Miscellaneous provisions

Many provisions of the SPA mention "the regulations," which often refers to the [Strata Property Regulation, BC Reg 116/2023](#) [SPR]. The provisions of the SPA can only be fully understood when read in conjunction with the SPR.

At the end of the SPA is the Schedule of Standard Bylaws, which lists the bylaws that would apply to a strata corporation unless it files different bylaws to replace them.

B. Property in a Strata Development

Every strata plan consists of two types of property: strata lots, and common property. Whether property in a strata development is categorized as part of a strata lot or part of common property has several legal implications, such as who is responsible for repair, whether an owner is permitted to make modifications, and the way the strata corporation may enforce bylaws and rules.

1. Strata Lot

The definition of a “strata lot” is simply a lot shown on a strata plan (*SPA*, s 1(1)). A strata lot may be contained in a building and defined with reference to its walls, ceilings, and floors, as in a conventional strata plan. However, a strata lot may also be defined with reference to a plot of land, as in a bare land strata plan.

2. Common Property

All owners in a strata corporation own the common property as tenants in common. An owner’s share of the common property is determined by dividing the unit entitlement of their strata lot by the total unit entitlement of all strata lots in the strata corporation (*SPA*, s 66). The responsibility for managing and maintaining the common property generally falls on the strata corporation.

Common property may be designated as limited common property, limiting their use to an exclusive subset of one or more strata lot owners. A strata corporation may also enter into an agreement with an owner or tenant to grant the owner or tenant exclusive use of or special privileges in common property for a limited period.

3. Unit Entitlement

Unit entitlement is a strata lot’s ownership share of the strata corporation’s common property, expenses, and liabilities (*SPA*, s 1(1)). Unless otherwise agreed at an annual or special general meeting, a strata lot’s unit entitlement is used in several formulas prescribed by the *SPA* to determine that lot’s required contribution to the strata corporation budget.

Every strata plan must include a Schedule of Unit Entitlement that lists the unit entitlement for each strata lot. Section 246 of the *SPA* provides three ways that a strata corporation may establish unit entitlement:

1. A whole number that is the same for every strata lot;
2. In square metres: the total habitable area (for residential strata lots) or the total area (for non-residential strata lots);
3. Any other allocation that the Superintendent of Real Estate approves as fair.

For the purposes of unit entitlement, “habitable area” excludes patios, balconies, garages, parking stalls, and storage areas that are not closets (*SPR*, s. 14.2).

For strata corporations created before July 1, 2000, the Schedule of Unit Entitlement can be obtained as one of the pages of a strata plan. For strata corporations created after July 1, 2000, Schedules of Unit Entitlement are filed separately. Thus, it is first necessary to obtain the general index of the strata plan, and then use the registration number of the Form V to request a copy from the Land Title and Survey Authority.

C. *The Strata Plan*

1. Overview

Every strata corporation has a strata plan that consolidates its fundamental documents. Among its functions include mapping the physical space of a strata corporation. A strata corporation's strata plan is valid when filed in the Land Title Office.

Common property may be designated as limited common property, where the common property is reserved for the exclusive use of the owners of one or more strata lots while keeping its designation as common property. How property is designated on the strata plan affects legal rights and obligations, such as who bears the responsibility of repair and the extent to which the strata corporation can control the property.

The legend of a strata plan, generally found on the first or second page, will indicate how different property designations are labelled. The legend would usually also indicate designated areas such as balconies, patios, parking spaces, and elevators.

2. Bare Land Strata Plans

A bare land strata plan is a strata plan that is defined with reference to land survey markers rather than floors, walls, or ceilings (*SPA*, s 1(1)). A bare land strata plan will not depict buildings located within a strata lot, including if the building existed when the bare land strata plan was created. However, a bare land strata plan will depict buildings located on common property.

3. Phased Strata Plans

A phased strata plan is used for strata developments that are constructed in stages. In such a strata development, the land is divided into multiple segments containing one or more strata lots, and each segment is constructed in sequence. As each segment is completed, the phased strata plan would add the new strata lots to the original strata corporation, rather than create a new strata corporation every time a strata plan is filed in the Land Title Office.

4. Amendments

The *SPA* allows strata plans to be amended. For example, strata lots can be added, divided, or combined. Common property can be incorporated into a strata lot, and a strata lot can be incorporated into common property. Designations of limited common property can be added or removed.

A strata corporation can designate common property as limited common property without needing to amend the strata plan. It is only necessary to file a sketch plan.

D. *Bylaws and Rules*

Strata corporations must have bylaws, as required by section 119 of the *SPA*. Bylaws may provide for the control, management, maintenance, use, and enjoyment of the strata lots, common property, and common assets of the strata corporation. They may also govern the administration of the strata corporation (*SPA*, s. 119).

1. Standard Bylaws

All strata corporations automatically adopt the Standard Bylaws except to the extent that different bylaws are filed in the Land Title Office (*SPA*, s 120(1)). This applies to all strata corporations created after July 1, 2000.

The Standard Bylaws are listed in the Schedule of Standard Bylaws, found at the end of the *SPA*.

2. Amending Bylaws

A strata corporation can make changes, deletions, or additions to its bylaws, including Standard Bylaws (*SPA*, s 126). Bylaw amendments must be approved at an annual or special general meeting, and do not take effect until they are filed in the Land Title Office (*SPA*, s 128). A strata corporation must inform owners and tenants of any approved bylaw amendments as soon as feasible (*SPA*, s 128 (4)).

The required threshold to approve bylaw amendments depends on the types of strata lot that make up the strata corporation (*SPA*, s 127):

- In a strata plan composed only of residential strata lots, amendments must be passed by a $\frac{3}{4}$ vote.
- In a strata plan composed only of non-residential strata lots, amendments must be passed by a $\frac{3}{4}$ vote unless another threshold is provided for in the bylaws.
- In a strata corporation containing both types of strata lots, amendments must be approved by both the residential owners and the non-residential owners: the residential owners must pass the amendments by a $\frac{3}{4}$ vote, and the non-residential owners must pass the amendments by either a $\frac{3}{4}$ vote or an alternative threshold if provided for in the bylaws.

3. Unenforceable Bylaws

A bylaw is unenforceable if it does one or more of the following (*SPA*, s 121(1)):

1. Contravenes any law or enactment, such as the *SPA* or the *SPR*;
2. Destroys or modifies an easement created under section 69 of the *SPA*;
3. Prohibits or restricts the right of an owner of a strata lot to freely sell, lease, mortgage or otherwise dispose of the strata lot or an interest in the strata lot.

The third restriction does not apply to bylaws governing activities relating to the sale of a strata lot, although the bylaw still must not prohibit or unreasonably restrict those activities. Bylaws that restrict the posting of “for sale” signs or the holding of open houses are specifically allowed (*SPA*, ss 121(2)(b), 122).

There are some further restrictions on the enforceability of bylaw amendments. For example:

- A bylaw that restricts pets cannot apply to any pet that, at the time the bylaw was passed, was already living with a resident without contravening any prior pet prohibition bylaws (*SPA*, s 123(2));
- A bylaw that restricts the age of strata lot residents is unenforceable, unless the bylaw is a requirement for one or more persons living in a strata lot to be aged 55 or older. Similarly to pet prohibitions, such a bylaw cannot apply to any person who, at the time the bylaw was passed, was already living in a strata lot without contravening any prior age restriction bylaws (*SPA*, ss 123.1, 123.2(a));
- An age restriction bylaw also cannot apply to any caregiver who resides in a strata lot for the purpose of caring for a person who requires caregivers due to disability, illness, or frailty (*SPA*, s 123.2(b)).

People with certain relationships with “specified residents” are also exempt from age restriction bylaws. Section 7.01 of the *SPR* defines the term “specified resident” to mean a resident of a strata lot who has either reached the minimum age in an age restriction bylaw,

or whose eligibility to live there is grandfathered by section 132.2(a) of the *SPA*. An age restriction bylaw must not apply to the following classes of people:

- A person under 19 years of age whose caregivers include a specified resident;
- A person 19 years of age or older
 - whose caregivers while they were under 19 years of age include a specified resident, and
 - who currently reside with the specified resident;
- A person who is married to or in a marriage-like relationship with a specified resident.

4. Rules

As primarily governed by section 125 of the *SPA*, a strata council can create rules, which function similarly to bylaws. Some key differences include:

- Rules can only govern the use, safety, and condition of common property and common assets, and therefore cannot govern the management, control, or use of a strata lot;
- In the event of a conflict between a bylaw and a rule, the bylaw prevails;
- A rule expires at the first annual general meeting after its creation, unless it is ratified by a majority vote at that annual general meeting or at a prior special general meeting. A ratified rule remains in force indefinitely until it is repealed, replaced, or amended;
- A strata corporation can only fine up to \$50 for a breach of a rule, in contrast with the larger maximum fine for a breach of a bylaw (*SPR*, s 7.1(a)).

The strata corporation must inform owners and tenants of any new rules as soon as feasible (*SPA*, s 125(4)).

E. Strata Property Parties and Duties

1. The Strata Corporation

A strata corporation has the duty to manage and maintain the common property and common assets for the benefit of the owners. This includes repairing common property, as well as maintaining property insurance on common property, common assets, buildings shown on the strata plan, and certain fixtures.

A strata corporation must also perform its financial and administrative duties. This includes:

- Paying common expenses;
- Establishing operating and contingency reserve funds;
- Maintaining financial and other records;
- Holding general meetings;
- Enforcing the strata corporation's bylaws.

A strata corporation has the power to enter into contracts, sue, and be sued. The [*Business Corporations Act, SBC 2002, c 57*](#) does not apply to strata corporations except as otherwise provided for in the *SPA* (*SPA*, s 291).

The powers and duties of a strata corporation are initially performed by the owner developer, and afterwards, by the strata council.

2. The Strata Lot Owners

The members of a strata corporation are the owners of the constituent strata lots. From section 1(1) of the *SPA*, by default an owner either one of the following:

1. The person registered in the Land Title Office as the freehold owner (whether in a personal or representative capacity);
2. The leasehold tenant in the case of a strata lot in a leasehold strata plan.

The main way in which owners govern a strata corporation is by electing the strata council at each annual general meeting. Furthermore, the *SPA* requires certain decisions to be approved by the owners, with various thresholds ranging from majority vote to unanimous consent. For example, a proposed budget must be approved by the owners with a majority vote (*SPA*, s 103), whereas approval for a special levy requires at least $\frac{3}{4}$ consent (*SPA*, s 108). For these decisions, the strata council is unable to act on their decision-making power alone, allowing for owners to provide more direct input.

Section 27 of the *SPA* allows for owners to direct the strata council or restrict its powers and duties by passing a resolution by majority vote at an annual or special general meeting. However, such a modification cannot force the strata council to act in a way that contradicts the *SPA*, the *SPR*, or the bylaws. Such a resolution is also subject to a few other limitations that protect a strata council's power to determine responsibility for cases of breaches of bylaws or rules.

The courts have not recognized other mechanisms for owners to direct the actions of strata councils: see [*Enefer v The Owners, Strata Plan LMS 1564*, 2005 BCSC 1866](#) and [*Nomani v The Owners, Strata Plan LMS 3837*, 2007 BCSC 276](#).

3. Strata Lot Tenants and Occupants

"Tenant" means a person who rents part or all of a strata lot, including subtenants; "occupant" means anyone besides an owner or tenant who occupies a strata lot (*SPA*, s 1(1)).

A strata corporation may fine an owner for bylaw or rule violations by tenants and occupants of their strata lot (*SPA*, s 130). It may also be possible for the strata corporation to enact bylaws making owners liable for tenant damage more generally.

4. Sections Within a Strata Corporation

Part 11 of the *SPA* enables strata corporations to establish sections, which create smaller corporate nested within the strata corporation. Sections act as smaller governance structures that represent groups of owners within a strata corporation that share similar interests due to owning similar types of strata lot.

From section 194 of the *SPA*, a section is a corporation, the provisions of the *SPA* generally applying to them as if they were strata corporations. Accordingly, some of their powers include:

- To create a budget to which their owners must contribute;
- Entering into contracts;
- Suing or being sued;
- Enforcing bylaws and rules.

A section can only be created to group strata owners along the following categories (*SPA*, s 191):

1. Owners of residential strata lots and owners of non-residential strata lots;
2. Owners of non-residential strata lots that have significantly different purposes;
3. Owners of different types of residential strata lots.

The different types of residential strata lots that may be grouped into a section are as follows (*SPR*, s 11.1):

1. Apartment-style strata lots;
2. Townhouse-style strata lots;
3. Detached houses.

The owner developer can create sections if, at the time the strata plan is deposited, the owner developer also files bylaws that provide for the creation and administration of the section.

After a strata corporation is created, the owners can amend the bylaws to create sections by approving a resolution by both of the following thresholds:

1. $\frac{3}{4}$ of all eligible voters in each of the proposed sections; and
2. $\frac{3}{4}$ of all eligible voters in the strata corporation overall.

5. **Strata Managers**

From its capacity to enter contracts, a strata corporation can enter into contracts with management companies to carry out duties that otherwise must be carried out by strata council members. Strata managers are agents of the strata corporation.

F. Kinds of Strata Lot

Strata lots can be designated as residential, or otherwise be non-residential. A strata development may have a mix of both types of strata lots.

Whether a strata lot is designated as a residential strata lot is significant. For example:

- Bylaw amendments must be approved by a $\frac{3}{4}$ threshold among both residential strata lot owners and non-residential strata lot owners;
- Designation of strata lots as residential also determines the way sections may be formed in the strata corporation;
- Whether a strata lot is a residential strata lot determines how the unit entitlement is calculated, ultimately determining the lot owner's share of common assets and expenses.

“Residential strata lot” is defined as a strata lot that is designed or intended to be used primarily as a residence (*SPA*, s 1(1)). There is no definition of a non-residential strata lot, so it would simply be a strata lot not designated as a residential strata lot. However, whether a strata lot is a residential strata lot might not be clear in some cases.

The designation of a strata lot depends in part on the strata development's zoning permissions. However, zoning is not sufficient by itself to determine whether a strata lot is a residential strata lot for the purposes of the *SPA*: see [*East Barriere Resort Limited v The Owners, Strata Plan KAS1819, 2017 BCCA 183*](#) at para 46, where the BC Court of Appeal ruled that the residential intention or design behind a strata lot must be interpreted using the documents at and around the strata corporation's creation, although the applicable zoning regulations are a useful aide for that interpretation.

IV. THE STRATA PLAN

A. Common Property

1. What Constitutes Common Property

On a strata plan, all space within the strata development's land parcel that does not fall within a strata lot is common property. All strata lot owners own this common property as tenants in common, proportionally to their respective unit entitlements.

In a conventional strata plan, common property would typically consist of the space outside the buildings, as well as any circulation, utility, and common areas within the buildings like amenities, lobbies, and elevators.

In a bare land strata plan, common property is typically limited to roadways, utilities, and common facilities. If the strata lots completely envelop the buildings situated on the bare land strata plan, the common property would consist of the grounds, leaving strata lot owners with significant control over aspects of their respective buildings such as building designs and finishes.

2. Decks, Patios, and Balconies

Decks, patios, and balconies may be shown on the strata plan as either part of a strata lot, undesignated common property, or limited common property. Typically, the strata corporation is responsible for repairing and maintaining decks, patios, and balconies under its bylaws regardless of how they are designated.

Due to section 14.2 of the *SPR*, the following are excluded from counting towards the "habitable area" formula of unit entitlement when they form part of a strata lot:

1. Patios;
2. Balconies;
3. Garages
4. Parking stalls;
5. Storage areas other than closet space.

When these structures are designated as common property, section 71 of the *SPA* would require a $\frac{3}{4}$ vote at an annual or special general meeting before the strata corporation may make a significant change in their use or appearance: see [*Frank v The Owners Strata Plan LMS 355, 2016 BCSC 1206*](#).

3. Building Systems

When utility systems serve multiple strata lots or the common property, they are considered common property, even when located within a strata lot. These are not shown on the strata plan, and it can be difficult to delineate where common property starts and ends. For instance, see [*Fudge v Owners, Strata Plan NW2636, 2012 BCPC 409*](#), where the court held that a washing machine discharge pipe found inside a strata lot was nevertheless common property due to being integrated with the building's wastewater collection systems.

A building component that only serves one strata lot despite being located outside the lot's boundaries may nevertheless still be common property if it is a fixture at common law. If the component is sufficiently attached to the building, and the intention behind its attachment is more for the better use of the building rather than for facilitating its own use, the component may be a fixture at common law: see [*La Salle Recreations Limited v Canadian Camdex Investments Limited, \[1969\] BCJ No 421 \(QL\), 1969 CanLII 740 \(BC*](#)

[CA](#)). For instance, a heat pump attached to common property for the benefit of only one strata lot may nevertheless be classified as common property: see [Warren v The Owners, Strata Plan VIS 6261, 2017 BCCRT 139](#).

Section 72 of the *SPA* allows bylaws to make an owner responsible for limited common property that they have the right to use, but not undesignated common property except as permitted in the *SPR*. Thus, a fixture found on limited common property may be an individual owner's responsibility, but a fixture found on undesignated common property is unlikely to be any individual owner's responsibility. The courts have ruled that section 72 does not prevent a strata corporation from assigning responsibility for common property to entire sections: see [Norenger Development \(Canada\) Inc. v Strata Plan NW 3271, 2018 BCSC 1690](#).

If such a building component is not a fixture, such as being insufficiently attached to the building or being primarily attached to facilitate its own use, it may instead be considered a chattel owned by the strata lot owner. The responsibility to repair and maintain falls on the owner, although the strata corporation may have authority to remove it under its bylaws, subject to the prohibition against significantly unfair action: see [Estrin v The Owners, Strata Plan LMS3758, 2023 BCCRT 350](#).

B. Parking and Storage Facilities

Issues arising from parking stalls often arise from how owner developers allocate stalls for sale.

When a strata lot contains one or more parking lots, the strata lot may be subject to strata fees, special levies, property taxes, other municipal levies, and municipal business licensing regulation.

Since January 1, 2014, strata corporations are required to disclose an Information Certificate, Form B of the *SPR*, listing which parking stalls and storage lockers have been allocated to a strata lot to prospective buyers of a strata lot. Parking is often contentious, depending on how parking stalls are designated and allocated.

1. Common Property

If parking is common property, the strata corporation has the authority to allocate stalls. The strata corporation must review and renew this allocation annually under section 76 of the *SPA*. This authority is limited by the strata corporation's bylaws, and allocations that are significantly unfair to any strata lot owner may be challenged. This authority does not enable the owner developer to sell additional stalls.

2. Limited Common Property Designated on Strata Plan

If parking is designated on the strata plan as limited common property for a given strata lot, that strata lot owner has the full right to use the parking stall in accordance with the bylaws. This designation can only be modified by an amendment to the strata plan, which requires unanimous consent of all the owners.

3. Leases and Licenses of Parking Stalls

Often in larger developments where parking stalls have higher value, the owner developer makes the first allocation of parking stalls by granting a 99-year lease to an entity they control. With each strata lot initial purchase, the owner developer grants licenses or partial lease assignments to the purchaser. When an owner sells their strata lot, the new purchaser must receive not only a transfer of the strata lot, but also a further assignment of the parking stall lease or license. As a result, the owner developer retains control of the parking stalls, even past the first annual general meeting.

Such an arrangement of parking stall leases and licenses may not be evident from the strata plan or the common property record, as they are typically not registered in the Land Title Office to minimize property transfer tax. Instead, the owner developer must disclose the arrangement as part of their disclosure statement under the [*Real Estate Development Marketing Act, SBC 2004, c 41*](#).

Note that for leases entered into before the strata plan is deposited, the *SPA* section 80 requirements for the strata corporation to approve of common property disposal do not apply. This is because strata corporations do not exist before their strata plan is deposited. Once the strata plan is deposited, the strata corporation assumes the role of landlord under any pre-existing parking stall lease arrangements.

Although the bylaws do not need to refer to the lease arrangement, provisions may include:

- A requirement for the strata corporation to place before the owners a resolution to designate stalls as limited common property for the owners with lease assignments or licenses from the owner developer;
- A requirement for the strata corporation to maintain a register of parking stalls allocated by lease assignments or licences from the developer.

Surface parking can only be placed in the owner developer's control by licence, not lease. This is because sections 73 and 73.1 of the [*Land Title Act, RSBC 1996, c 250*](#) forbid the assignment of leases of land that is both less than the entire legal parcel and not for the purpose of leasing a building or part of a building. Because a license does not create an interest in land, the strata corporation may revoke such a parking stall licence without needing to provide notice to the strata lot owner.

Section 20 of the *Land Title Act* raises questions about whether this common practice of unregistered parking stall leases is enforceable. In [*Hill v Strata Plan NW 2477 \(Owners\), 2 BCAC 289, 1991 CanLII 529 \(BC CA\)*](#) [Hill], the court ruled that an owner developer could not arrange with a particular owner for the exclusive use of common property; despite being a case on the *Condominium Act*, it continues to be applicable to the *SPA* ([*The Owners, Strata Plan VIS 3437 v Townsite Marina Ltd., 2018 BCCRT 166*](#)). In [*Townsite Marina Ltd. v The Owners, Strata Plan VIS3437, 2018 BCSC 2160*](#) at paras 27 to 28, the BC Supreme Court recognized that such a practice has some acceptance, "possibly even a consensus," among legal practitioners as valid, although the court also ultimately left the question open.

4. Parking Stalls and Storage Lockers as Part of Strata Lot

A parking stall or storage locker may appear on the strata plan as part of a strata lot. Parking stalls that are part of a strata lot may be leased or licensed by the owner of the strata lot.

When a parking stall is part of a residential strata lot, the parking stall is excluded from unit entitlement calculations due to the definition of "habitable area" from section 14.2 of the *SPR*. Because unit entitlement calculations for non-residential strata lots use the total area of the lot, parking stalls would be counted in that strata lot's unit entitlement calculation.

C. Schedule of Unit Entitlement

Unit entitlement is the basic measure of a strata lot's share in the strata corporation's common property, common assets, common expenses, and liabilities. Depending on the asset or liability, a strata lot's share may be determined by dividing the lot's unit entitlement by the sum of all unit

entitlements in the strata corporation, or by the sum of all unit entitlements in a smaller subset of strata lots affected by the matter.

A Schedule of Unit Entitlement (Form V of the *SPR*) must be filed in the Land Title Office with each strata plan. Older strata plans that have not yet been amended under the *SPA* have the Schedule of Unit Entitlement as Form 1.

Unless modified, unit entitlement determines the following:

1. The ownership interest of each strata lot owner in the common property and common assets (*SPA*, s 66);
2. The liability of each owner for judgments against the strata corporation (*SPA*, s 166);
3. The contribution of each owner to the strata corporation's operating fund and contingency reserve fund (*SPA*, s 99; *SPR*, ss 11.2 – 11.3);
4. The contribution of each owner to a strata corporation's expenses that relate solely to a section (*SPA*, s 195; *SPR*, ss 11.2 – 11.3);
5. The contribution of each owner to special levies (*SPA*, s 108);
6. The owner developer's share of expenses attributable to common facilities of earlier phases of a phased strata plan, until later phases are deposited (*SPA*, 227).

The mechanisms that can override or modify the application of unit entitlement include:

- Unanimous votes under section 100 of the *SPA*;
- Establishing sections;
- Bylaws establishing distinctions between types of strata lot;
- Sections 6.4, 6.5, 11.2, and 11.3 of the *SPR*;
- Situations where using unit entitlement is significantly unfair.

1. Changing Unit Entitlement

In scenarios such as enclosing decks and converting crawlspaces and attics into living space, a strata corporation may seek to amend the Schedule of Unit Entitlement. However, the *SPA* only provides a few circumstances in which that amendment is possible:

1. For a residential strata lot: an application to the BC Supreme Court under section 246(7);
2. For a residential strata lot: a unanimous vote to amend the Schedule of Unit Entitlement under section 261;
3. For either type of strata lot: a filing under s 264, as consequential to certain fundamental changes to the strata plan:
 - a. Adding to, consolidating, or dividing a strata lot (*SPA*, s 259);
 - b. Making land held by the strata corporation into a new strata lot (*SPA*, s 262);
 - c. Adding a strata lot to common property (*SPA*, s 263).

If the Schedule of Unit Entitlement allocates expenses in a significantly unfair manner to one or more strata lot owners, the court or the CRT may make an order under section 164 of the *SPA* to allocate some or all expenses using a different method: see [*Strata Plan VR1767 \(Owners\) v Seven Estate Ltd.*, 2002 BCSC 381](#), [*Southern Interior Construction Association v Strata Plan KAS 2048*, 2007 BCSC 792](#), and [*Klassen v The Owners, Strata Plan LMS 1710*, 2022 BCCRT 705](#).

In [*King Day Holdings Ltd. v The Owners, Strata Plan LMS3851 \(Re\)*, 2018 BCSC 1772](#) (affirmed in [2020 BCCA 342](#)), the court overturned two special levies for being significantly unfair to King Day Holdings Ltd., even though the levies were passed by the respondent strata corporation at its annual general meeting.

Ultimately, it is rare that a strata corporation dividing expenses by unit entitlement will create significantly unfair results. This is because the fact that an owner must contribute towards expenses that do not benefit them is insufficient by itself to constitute significant unfairness: see [*Smith v The Owners, Strata Plan KAS 2503*, 2023 BCCRT 146](#).

Strata corporations are required to disclose such court judgments in their Information Certificates under section 59(3)(j) of the *SPA*, although the judgment binds purchasers even if the Information Certificate fails to disclose this information.

D. Schedule of Voting Rights

By default, section 53 of the *SPA* governs voting in a strata corporation, giving each strata lot one vote. This cannot be overridden using bylaws.

If the strata corporation contains at least one non-residential unit, a Schedule of Voting Rights, schedule W of the *SPR*, may be filed to determine the voting rights of strata lot owners and override section 53. On older strata plans that have yet to be amended under the *SPA*, the Schedule of Voting Rights is found on the strata plan as Form 3.

For strata corporations that only contain residential strata lots, a Schedule of Voting Rights may only be filed following certain strata plan amendments in accordance with section 264 of the *SPA*.

1. Mixed Residential/Non-residential Strata Plan

By default, section 53 of the *SPA* gives every strata lot one vote in a strata corporation containing both residential and non-residential strata lots. Under section 247(2)(a) of the *SPA*, the owner developer may, without needing approval, file a Schedule of Voting Rights that conforms to the following formula:

1. Each residential strata lot gets one vote;
2. The number of votes that each non-residential strata lot gets is equal to its unit entitlement divided by the average (mean) unit entitlement of all the *residential* strata lots.

This Schedule of Voting Rights has the following effect:

1. The residential strata lots have equal voting power;
2. The ratio of total residential votes to total non-residential votes is equal to the ratio of total residential unit entitlement to non-residential unit entitlement;
3. Non-residential votes are allocated between non-residential strata lots according to unit entitlement.

The Superintendent of Real Estate may approve a Schedule of Voting Rights that allocates votes on some other basis, as long as they are satisfied that the distribution is fair (*SPA*, s 248). An owner developer might pursue this kind of Schedule of Voting Rights to ensure a certain bloc of strata lot owners has enough voting power to defeat resolutions requiring $\frac{3}{4}$ approval.

E. Land Title Office Records

The Land Title Office maintains a common property record (*SPA*, s 252) and a strata plan general index (*SPA*, s 250) for each filed strata plan. Before 1995, these documents were found in the strata plan itself.

1. Common Property Record

The common property record tracks interests and transactions concerning the common property separately from the strata lots. It contains an endorsement with respect to the following:

1. Any charge or interest that separately charges the common property;
2. Any freehold disposition of common property (*SPR*, s 14.14);
3. Any designation of limited common property under section 74 of the *SPA* (*SPR*, s 14.14);
4. Any removal of a limited common property designation under section 75 of the *SPA* (*SPR*, s 14.14).

2. General Index

The general index records certain documents that the *SPA* requires to be deposited in the Land Title Office along with the strata plan. Some of these documents were part of the strata plan itself under previous legislation. The general index contains an endorsement with respect to the following:

1. The Schedule of Unit Entitlement and any amendments to it;
2. The Schedule of Voting Rights and any amendments to it;
3. The strata corporation's mailing address;
4. The bylaws filed by the owner developer, and any amendments to them;
5. Amalgamation agreements under section 269 of the *SPA*;
6. Orders of the registrar under section 276 of the *SPA*, or of the Supreme Court under section 279 of the *SPA*;
7. Any resolutions required to be filed in the Land Title Office by the *SPA* or the *SPR*;
8. Any freehold disposition of common property;
9. Any designation of limited common property under section 74 of the *SPA*;
10. Any removal of a limited common property designation under section 75 of the *SPA*;
11. Any other document required to be filed in the Land Title Office that is not endorsed in other Land Title Office records.

V. COMMON PROPERTY AND COMMON ASSETS

A. *Introduction to Common Property and Common Assets*

Generally, property in a strata corporation that is not part of a strata lot is common property. Common property is a frequent source of disputes between strata lot owners and strata corporations, often over whether a strata owner has the right to use it or who is responsible for repairs or maintenance. Generally, the responsibility for repairs and maintenance are divided as follows: the strata corporation is responsible for the common property, while strata owners are responsible for their respective strata lots.

While common property is usually for the use and benefit of all the strata lot owners of a strata corporation, a strata corporation may grant short- or long-term exclusive use of common property or a common asset to a one or more owners. A strata corporation may also restrict access to common property areas where there are reasonable, operational reasons for doing so, such as mechanical rooms.

1. Definition and Use of Common Property

Section 1(1) of the *SPA* defines common property as follows:

- (a) that part of the land and buildings shown on a strata plan that is not part of a strata lot, and
- (b) pipes, wires, cables, chutes, ducts and other facilities for the passage or provision of water, sewage, drainage, gas, oil, electricity, telephone, radio, television, garbage, heating and cooling systems, or other similar services, if they are located
 - (i) within a floor, wall or ceiling that forms a boundary
 - (A) between a strata lot and another strata lot,
 - (B) between a strata lot and the common property, or
 - (C) between a strata lot or common property and another parcel of land,
 - or
 - (ii) wholly or partially within a strata lot, if they are capable of being and intended to be used in connection with the enjoyment of another strata lot or the common property.

a) *“Not Part of a Strata Lot”*

The areas of a strata plan that do not fall within a strata lot are automatically common property. This can include areas of the strata corporation that are not explicitly shown on the strata plan: see [*Chan v Owners, Strata Plan VR-151, 2010 BCSC 1725*](#), where the court ruled that the airspace above a strata lot owner’s yard was common property.

Nevertheless, strata plan legends typically provide a way of designating common property areas, often using letters like “CP” or “C” on common spaces such as hallways, stairwells, elevators, and parking stalls. In a conventional strata plan, the land is common property.

In a bare land strata plan, the land itself is divided into strata lots. As a result, much of a building constructed on a strata lot, including even the exterior, are not considered common property. The common property would be limited to roads, sidewalks, and recreational facilities that do not fall within a strata lot. Underground services that service more than one strata lot would also be common property.

When a component of a system or service, such as water, mechanical, or electrical systems, is located on the common property, they are common property even if it only serves on strata lot: for instance, see [Newman v The Owners, Strata Plan EPS 680, 2017 BCCRT 122](#). The location of these physical components is typically not marked on the strata plan, so it is necessary to refer to the original mechanical drawings.

Fixtures as Common Property

The SPA does not replace the common law relating to fixtures. Because the law considers fixtures to be part of the land, a strata lot owner who affixes their personal belongings onto the strata corporation's common property may cause those belongings to become common property. However, if the object does not become a fixture, it remains a chattel, which remains as the strata lot owner's personal property. The courts use a two-part test to determine whether an object is a fixture: see [Royal Bank of Canada v Neilson \(Trustee of\), 43 BCLR \(2d\) 363, 1990 CanLII 1932 \(BC CA\)](#).

Firstly, the court considers the object's degree of attachment to the land or building. If an object stays in place by its own weight only, it is presumed to be a chattel unless it can be proven to be intended as part of the land. If the object has any amount of additional affixation to the land, it is presumed to be a fixture unless it can be proven to be intended to remain considered a chattel.

Secondly, the court considers the purpose of any affixation. If the affixation is for the better use of the land or building, the object is a fixture. If the affixation is for the better use of the object as itself, the object is a chattel.

For instance, in [Young v The Owners, Strata Plan 111, 2022 BCCRT 793](#), the tribunal ruled that a chimney and deck installed on common property by a previous owner had become common property due to being a fixture. As a result, the strata corporation's bylaw to make the subsequent owner responsible for their repair and maintenance was unenforceable due to the limitations from section 72 of the SPA on a strata corporation's ability to make individual owners responsible for common property that is not limited common property.

b) "Pipes, Wires, Cables, Chutes, Ducts and Other Facilities"

"Within a Floor, Wall or Ceiling that Forms a Boundary"

When these components are found inside a wall that divides a strata lot from another strata lot, the common property, or another land parcel, the components are considered common property. This remains true even if the component in question only benefits one strata lot. The Civil Resolution Tribunal has found a number of such "well-embedded objects" to be common property:

- Shower diverters ([Lorenz v The Owners, Strata Plan NW 2001, 2017 BCCRT 65](#));
- Shower mixing valves ([Robinson v The Owners, Strata Plan NW 3308, 2019 BCCRT 238](#));
- Pressure reducing valves ([Hufton v The Owners, Strata Plan NW 644, 2019 BCCRT 1096](#));
- Radiant heating system pipes in certain locations ([Bindra v The Owners, Strata Plan EPS3829, 2021 BCCRT 1113](#));

- Toilet water supply line ([Groven v The Owners, Strata Plan LMS 2460, 2022 BCCRT 1270](#));
- Dryer duct ([Kill v The Owners, Strata Plan LMS 2472, 2022 BCCRT 753](#)).

In a bare land strata plan, the exterior walls of a building might lie entirely within the strata lot, so components found inside exterior walls may not necessarily meet this definition of common property.

“Wholly or Partially Within a Strata Lot”

If a component such as a pipe, wire, or cable is found entirely within a strata lot, it can still be common property if it is intended to and capable of being used for the benefit of another strata lot or the common property.

For instance, the court ruled in [Fudge v Owners, Strata Plan NW2636, 2012 BCPC 409](#) that a drainage pipe located within the plaintiff’s lot was still considered common property, because the pipe was most properly seen as part of an integrated network of plumbing pipes intended to benefit all the lot owners as a whole, indivisible system.

Because these components are often closely integrated with systems servicing the strata complex, they are frequently found to be common property despite being located within a strata lot. See the following such examples:

- Hot water pipes ([Taychuk v Owners, Strata Plan LMS 744, 2002 BCSC 1638](#));
- Drain pipes under a toilet ([Perri v The Owners, Strata Plan KAS 3313, 2022 BCCRT 1257](#));
- Heat pumps whose operation had some degree of effect and reliance on heat pumps servicing other strata lots ([Lin v The Owners, Strata Plan LMS 4071, 2020 BCCRT 690](#));
- Fan coil units connected to heat pumps found on common property ([Bowie v The Owners, Strata Plan VIS 5766, 2020 BCCRT 733](#));
- Perimeter drainage in a yard that also benefits other strata lots and the common property ([Chapel v The Owners, SP VIS 1517, 2017 BCCRT 5](#)).

However, when such components are found to be not sufficiently integrated with the common property system, their location within the strata lot and servicing of only one strata lot renders them part of the strata lot. See the following such examples:

- Taps and sinks located entirely within the strata lot ([Jaggard v The Owners, Strata Plan EPS1954, 2022 BCCRT 510](#));
- Hot water tanks ([Sparacio v The Owners, Strata Plan LMS 4383, 2021 BCCRT 528](#));
- The drain pipe attached to a drain pipe that was common property ([Sha v The Owners, Strata Plan NW 644, 2022 BCCRT 196](#));
- The water shut-off valve under a sink ([The Owners, Strata Plan LMS 1880 v Harper, 2022 BCCRT 956](#)).

In the case of a bare land strata plot, such systems are more likely to reside entirely within one strata lot and only serve that strata lot. This means that such components are less likely to be common property. For instance, see [Beach et al v The Owners, Strata Plan KAS 722, 2018 BCCRT 2](#), [Weideman v The Owners, Strata Plan K 495, 2022 BCCRT 140](#), and [Punta Del Mar Estates Ltd. v The Owners, Strata Plan LMS 483, 2019 BCCRT 1020](#).

Determining whether a component found inside a strata lot is part of an integrated whole system likely requires consulting an expert in that kind of system.

2. Designation of Limited Common Property

The strata corporation can designate common property as limited common property (“LCP”) for the exclusive use of one or more strata lot owners. This is different from the *SPA* section 76 procedure to grant short-term exclusive use of common property.

Section 1(1) of the *SPA* defines LCP as common property “designated for the exclusive use of the owners of one or more strata lots.” Because LCP is created by designation, common property that happens to be physically accessible to only a subset of strata lot owners does not automatically make it LCP: see [*The Owners, Strata Plan LMS 1162 v Triple P Enterprises Ltd.*, 2018 BCSC 1502](#) at paras 24 – 26 and [*Poole v Owners, Strata Plan VR 2506*, 2004 BCSC 1613](#).

Section 73 of the *SPA* provides for four methods to designate limited common property:

1. By the owner developer on the strata plan deposited in the Land Title Office;
2. By the owner developer designating parking stalls as limited common property under section 258;
3. By an amendment to the strata plan under section 257;
4. By a resolution passed by a $\frac{3}{4}$ vote under section 74.

For instance, in a strata plan containing residential strata lots, non-residential strata lots, and sections, the strata plan may allocate LCP for all the strata lots of a section. One possible purpose might be to designate some parking as visitor parking, or to restrict owners of commercial strata lots from facilities only intended for owners of residential strata lots.

Because an LCP designation may be created by a $\frac{3}{4}$ vote resolution that does not amend the strata plan, it is necessary to consult both the strata plan and the common property record to determine whether a piece of common property is LCP.

As noted in [*Macdonald v The Owners, EPS 522*, 2019 BCSC 876](#), a designation of limited common property is more permanent when created by a strata plan amendment as opposed to a resolution: a strata plan amendment can only be reversed by a unanimous vote, but section 75(2) of the *SPA* allows a limited common property designation created by section 74 to be reversed by another resolution passed by a $\frac{3}{4}$ vote.

3. Definition of Common Asset

A common asset is property that is held by or on behalf of the strata corporation. Like common property, the owners of the strata corporation collectively own the strata corporation’s common assets as tenants in common (*SPA*, s 66). From section 1(1) of the *SPA*, common assets may come in the following forms:

1. Personal property;
2. Land that is not shown on the strata plan;
3. Land that is shown as a strata lot on the strata plan.

A somewhat common example of a common asset is a strata lot owned by a strata corporation as a caretaker’s suite or a guest suite for owners’ visitors. Common assets may also come in the form of rights of easements. Sometimes, a strata corporation might co-own a strata lot with another strata corporation, each strata corporation co-owning a share

of the common asset. Examples of personal property common assets include equipment and websites owned by the strata corporation.

B. Responsibilities of the Strata Corporation

Whether through the owner developer or the strata council, the strata corporation has a duty to manage and maintain the common property and common assets for the benefit of all the owners (*SPA*, s 3). This includes:

- Repair and maintenance (*SPA*, s 72(1));
- Obtaining and maintaining insurance, including for common property, common assets, and buildings shown on the strata plan (*SPA*, s 149(1)).

If an owner developer enters the strata corporation into a long-term lease of common property or assets, the lease may be rendered void and unenforceable if a court finds that it benefits the owner developer to the detriment of present or future owners. However, such leases may also be upheld if the owner developer gave sufficient notice through the disclosure statement or the land title registry: see [*The Owners, Strata Plan VIS2968 v K.R.C. Enterprises Inc.*, 2007 BCSC 774](#).

Section 72(2)(a) of the *SPA* enables a strata corporation to pass a bylaw to make an owner responsible for limited common property that the owner has a right to use. However, a bylaw that purports to make an owner responsible for repair and maintenance of common property without a designation as limited common property is unenforceable: although section 72(2)(b) enables a bylaw to make an owner responsible for undesignated common property if identified in the *SPR*, no such regulation has passed as of July 11, 2023. On the other hand, a strata corporation may pass bylaws to make a section responsible for repairing and maintaining common property, as confirmed in [*Norenger Development \(Canada\) Inc. v Strata Plan NW 3271*, 2018 BCSC 1690](#).

It may be possible for an owner to be responsible for repairing common property that they have altered, to the extent that the damage is attributable to the owner's modifications rather than general wear, tear, and deterioration over time: see [*Elahi v Owners, Strata Plan VR 1023*, 2011 BCSC 1665](#) at para 55.

C. Responsibilities of Strata Lot Owners

The responsibility of strata lot owners towards common property and common assets can vary depending on the strata corporation's bylaws. The Standard Bylaws contain a number of provisions relating to owners' responsibility for common property and common assets, but these provisions would not apply to any strata corporation that has amended them out.

Section 130 of the *SPA* makes owners and tenants responsible for contraventions of bylaws or rules, including those by visitors they have invited. Under Standard Bylaw 3, owners, their tenants, occupants, or visitors must not do any of the following regarding strata lots, common property, or common assets:

- Cause a nuisance or hazard to another person;
- Cause unreasonable noise;
- Unreasonably interfere with the rights of other persons to use and enjoy the common property, common assets or another strata lot;
- Do anything illegal;
- Contradict the express or implied purpose of a strata lot or common property;
- Cause damage greater than reasonable wear and tear to any property that is the responsibility of the strata corporation;
- Exceed the prescribed number of pets or leave animals unsecured on common property.

Standard Bylaw 6 requires owners to obtain the strata corporation's written approval before making any alteration to any common property. This is best conducted through a resolution of the strata council that is recorded in the strata council meeting minutes, along with any terms and conditions. Typically, an unauthorized alteration to common property or common assets would be a violation of the strata corporation's bylaws, meaning that the responsible owner may be subject to the strata corporation's enforcement measures such as fines. The strata may also remove the alteration and charge the cost of doing so to the owner.

Standard Bylaw 8 makes the strata corporation responsible for repairs and maintenance of limited common property if the repair or maintenance occurs less than once per year, or if the repair or maintenance occurs on certain exterior structural elements. Generally speaking, this means that owners are only responsible for regularly occurring repairs or maintenance of interior limited common property.

D. Ownership of Common Property

1. Nature of Common Property Ownership

Each strata lot owner owns the common property and common assets of the strata corporation as a tenant in common, proportionate to their unit entitlement (*SPA*, s 66). To determine a strata lot's share of the common ownership, its unit entitlement is divided by the sum of all unit entitlements in the strata corporation. The strata corporation retains control over use and maintenance of the common property and common assets.

Because a strata corporation must manage common property for the benefit of the owners as a whole, it cannot make any guarantees to strata lot purchasers about exclusive use of common property, other than through designations of limited common property. See [Hill v Strata Plan NW 2477 \(Owners\)](#), 2 BCAC 289, 1991 CanLII 529 (BC CA).

Residents have a reasonable expectation of privacy in areas of the common property that would normally only be accessed for repair or maintenance purposes. As a result, pursuant to section 8 of the [Canadian Charter of Rights and Freedoms](#), a search warrant is typically required for police investigations in such areas: see [R. v DiPalma](#), 2008 BCCA 342. In contrast, for areas of the common property where it is expected that visitors might be admitted, such as hallways and secured parking lots, the expectation of privacy may not exist: see [R. v Hugh](#), 2014 BCSC 1426.

When a strata lot owner sells their strata lot, their share of the common property is automatically transferred to the new owner due to section 66 of the *SPA*: see [Christian v Calvano](#), 2014 BCSC 2392.

E. Boundaries of Common Property

1. Strata Lot Boundaries

Section 1(1) of the *SPA* defines common property as "that part of the land and buildings shown on a strata plan that is not part of a strata lot." This may raise questions of the boundaries of a strata lot with respect to adjacent building components that are not shown on the strata plan.

Section 68 of the *SPA* provides that unless the strata plan shows otherwise, the boundary between a strata lot and another strata lot, the common property, or another land parcel is the midpoint of the structural portion of the dividing wall, floor, or ceiling. In the absence of a dividing wall, floor, or ceiling, the boundary is defined by the strata plan.

Accordingly, the inside of a wall is not inherently common property, although components found inside boundary walls are likely common property.

The boundaries of strata lots on bare land strata plans must be delineated with reference to survey markers, as approved by the Surveyor General.

2. Windows, Doors, and Skylights

Windows, doors, and skylights may be situated on top of a strata lot boundary, raising potential questions about ownership and responsibility. A door seemingly attached to a strata lot may nevertheless be common property due to being situated on the exterior side of the strata lot boundary in the midpoint of the wall: [*Aminolashrafi v The Owners, Strata Plan BCS152*, 2022 BCCRT 695 at para 15](#).

If Standard Bylaw 8 is still in effect for a strata corporation, such building components are the responsibility of the strata corporation in all situations. Otherwise, the strata corporation may pass an alternative bylaw charging it with responsibility for windows, doors, and skylights that are part of a strata lot, as permitted by section 72(3) of the *SPA*.

The CRT has found windows, doors, and skylights that straddle strata lot boundaries to be common property: see for instance [*Seymour et al v The Owners, Strata Plan VR2697*, 2018 BCCRT 227](#) at para 25. This makes any bylaw making individual owners responsible for their repair and maintenance unenforceable due to section 72(2)(b) of the *SPA*.

F. Implied Easements

Section 77 of the *SPA* require owners to give the strata corporation reasonable access to common property in order to perform its duties, such as the duty to repair limited common property whose responsibility still rests on the strata corporation as per its bylaws. This is largely relevant for situations where common property is only accessible through a strata lot, such as a limited common property balcony accessible only through one strata lot.

What constitutes “reasonable access” depends on the bylaws. In Standard Bylaw 7, 48 hours’ notice of a valid reason for entry requires an owner, tenant, occupant, or visitor to grant the strata corporation access to property that is under the responsibility of the strata corporation. If the owner continues to refuse access, the strata corporation may apply for a court or CRT order to obtain access.

In [*Poole v Owners, Strata Plan VR 2506*, 2004 BCSC 1613](#), the court upheld that an owner with authorized access to limited common property has a similar right to refuse unreasonable access by the strata corporation to common property.

G. Various Uses of Common Property

The following all affect how a particular piece of common property may be used in a strata corporation:

1. The strata plan;
2. The bylaws and rules;
3. The location of the common property;
4. The strata corporation’s duty to manage and maintain common property and assets for the benefit of the owners;
5. The owner developer’s disclosure statement.

1. Recreational Facilities

Many strata developments have recreational facilities for the owners’ use. They are typically subject to rules that may, for instance, govern hours of operation or usage by

guests. Recreational facilities may be common property, limited common property, another strata lot, or even a common asset on another land parcel.

When a recreational facility is intended to be used and accessed by more than one strata corporation, there may be easements granting mutual access to the facility. These easements must be registered to be enforceable, and once registered, they continue to bind future owners until removed.

2. The Roof

Roofs are common property, unless designated as limited common property on the strata plan for the benefit of all strata lots of a section. As common property, roofs are the responsibility of the strata corporation; as limited common property, the roof is the responsibility of its assigned section.

3. Gardens and Back Yards

A garden or back yard adjacent to a strata lot is common property, unless designated on the strata plan as limited common property or part of the adjacent strata lot. The air space above a yard that is part of a strata lot is common property: [*Chan v Owners, Strata Plan VR-151, 2010 BCSC 1725*](#).

Unless exclusive use is granted under section 76 of the *SPA*, the owner of the strata lot beside a common property garden or yard is not entitled to exclusive use. As with all other common property, alterations to a common property garden or yard requires the approval of the strata corporation. Therefore, it is advisable for a strata lot owner to ascertain whether a garden or yard is part of their strata lot or the common property before proceeding with alterations.

H. Alterations to Common Property

Under the Standard Bylaws, a strata lot owner cannot alter any common property or assets without the strata corporation's prior written permission. In contrast, the strata corporation is only limited by sections 71, 96, 97, and 98 of the *SPA* in its ability to alter common property.

1. Alterations by the Strata Corporation

Sections 96 to 98 of the *SPA* enumerate spending restrictions on a strata corporation in the course of altering common property.

The main restriction on a strata corporation's authority to alter common property is section 71 of the *SPA*: significant changes in the use or appearance of common property or common assets require $\frac{3}{4}$ approval of the strata lot owners. This includes limited common property: see [*BOWIE v The Owners, Strata Plan VR1122, 2019 BCCRT 1342*](#). If there are reasonable grounds to believe that immediate change is necessary to ensure safety or prevent significant loss or damage, only the strata council acting for the strata corporation is required to approve the change.

To determine whether a proposed change is "significant," the court listed the following factors in [*Foley v The Owners, Strata Plan VR 387, 2014 BCSC 1333*](#) at para 19:

1. Whether the change is visible to residents or the general public;
2. Whether the change affects the use or enjoyment of any strata lots;
3. Whether the change caused any direct interference or disruption to use;
4. Whether the change impacted the marketability or value of the strata lot;
5. The number and types of strata lots in the strata corporation;
6. Past precedent from the strata corporation's prior governance.

The following are examples of alterations that have been ruled to not be a significant change requiring approval of the owners:

- Planting shrubbery ([*Reid v Strata Plan LMS 2503 \(Owners\)*, 2001 BCSC 1578](#));
- Trimming hedges ([*Muscardin v The Owners, Strata Plan LMS3758*, 2022 BCCRT 912](#));
- Changing storage lockers from wood to wire ([*Kaminski v The Owners, Strata Plan K 577*, 2021 BCCRT 1246](#)).

In contrast, the following alterations have been found to be significant:

- Removing windows ([*Basran v The Owners, Strata Plan NW 1868*, 2020 BCCRT 573](#));
- Changing carpet to carpet tiles ([*Porcheron et al v The Owners, Strata Plan KAS 2716*, 2018 BCCRT 161](#));
- Changing the paint colour of the exterior trim ([*Solvberg v The Owners, Strata LMS 753*, 2018 BCCRT 309](#)).

2. Alteration by Owners

Under the Standard Bylaws, owners must receive prior written consent of the strata corporation before making any alterations to common property, including limited common property or common assets. Significant changes must be approved by $\frac{3}{4}$ of the strata lot owners, regardless of the bylaws of the strata corporation.

The strata council or the strata lot owners (in the case of a significant change) may reject a proposed alteration to common property, although it is possible for such a rejection to be struck down as a “significantly unfair act” under section 164 of the *SPA*. For instance, a section 164 claim might arise if a strata council rejects an alteration despite approving similar alterations in the past.

Owners should ensure to obtain all required municipal permits and approvals before proceeding with alterations; failure to do so can lead to problems. For instance, in [*Kaufmann v Strata Corporation, Strata Plan 770*, 2008 BCSC 863](#), an alteration was approved by the strata corporation but later found to violate the building’s zoning. The court refused to order the strata corporation to apply for the necessary rezoning to accommodate the alteration, on the grounds that such an undertaking would be unduly burdensome for the strata corporation.

3. Previously Approved Alterations

Repairs and maintenance to common property may sometimes require the removal of previously-approved alterations. An owner must re-apply for permission to reinstall the removed alteration, and cannot assume a right to reinstall the alteration due to approval of its previous installation ([*Baker v The owners, Strata Plan NW3304*, 2002 BCSC 1559](#)).

However, before a strata corporation commences such repairs, it must consider the possibility of proceeding without removing the previously approved alteration; failure to do so may cause the removal to constitute a significantly unfair act ([*The Owners, Strata Plan VR 663 v Murphy*, 2012 BCSC 1294](#)).

4. Indemnity Agreements Related to Alterations

A strata corporation is permitted to require a strata lot owner to assume responsibility for any expenses arising from alterations of common property. For the purposes of owner or tenant insurance policies, such an indemnity agreement should list the items and amounts to be covered.

Under section 59(3)(c) of the *SPA*, the Information Certificate that a strata corporation issues must disclose these indemnity agreements. If a strata corporation fails to make this disclosure to a strata lot purchaser, the new owner could be exempt from the indemnity agreement due to not being a party to the original agreement: see [*Nguyen v The Owners, Strata Plan Vr 97, 2022 BCCRT 260*](#).

I. Duty to Repair

The classification of property as part of a strata lot, common property, or limited common property will determine whether the strata corporation or the strata owners have the duty to repair it.

1. Repair of Common Property

Section 72 of the *SPA* reads,

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

As of July 11, 2023, no regulation has been passed to give effect to section 72(2)(b). Therefore, a bylaw purporting to make an owner responsible for common property is unenforceable. Strata corporations nevertheless sometimes enter into an agreement with an owner for that owner to be responsible for the expenses of repairing and maintaining alterations to common property, under the grounds that this responsibility would not be imposed by bylaw; it is an open question as for whether this practice is permitted by the *SPA*.

The standard of a strata corporation's section 72 duties is reasonableness, not perfection: [*Weir v Owners, Strata Plan NW 17, 2010 BCSC 784*](#). This means that a strata corporation is not limited to the "best" solution to a repair situation. Their duty to act in the interests of the owners does not reach as far as a fiduciary duty ([*Petersen v Proline Management Ltd., 2007 BCSC 790*](#)), and a strata corporation that acts reasonably does not become liable for claims of negligence caused by defective repairs ([*Wright v The Owners, Strata Plan #205, \[1996\] BCJ No 381 \(QL\), 1996 CanLII 2460 \(BC SC\)*](#)). Because a strata council is made up of volunteers who are not expected to have expertise in building maintenance and repair, the strata council is entitled to rely on the advice of its contractors and other professionals: see [*Dolnik v The Owners, Strata Plan LMS 1350, 2023 BCSC 113*](#) at para 69.

In some situations, a strata corporation's failure to satisfy its duty to repair can constitute a significantly unfair act under section 164 of the *SPA*. However, failing to reasonably repair and maintain common property is not automatically significantly unfair: see [*Jobanputra v The Owners, Strata Plan VR 911, 2023 BCCRT 602*](#).

J. Bylaws and Rules on Common Property and Common Assets

Any Standard Bylaw does not apply to a strata corporation that has amended it out.

1. Schedule of Standard Bylaws

Under Standard Bylaw 2(2), an owner who has the use of limited common property is by default responsible for its repair and maintenance, except as provided in other bylaws.

Under Standard Bylaw 8(c), the strata corporation is responsible for repairs and maintenance of limited common property that occur less frequently than once a year, as well as all repairs and maintenance of a variety of exterior building elements.

2. Repair and Maintenance by Owner

The conjunction of Standard Bylaws 2(2) and 8(c) make an owner responsible for frequently occurring repairs and maintenance of limited common property elements. Standard Bylaw 3(2) may make an owner responsible for repairs to any damage to the strata corporation's common property and common assets that they, a tenant, an occupant, or a visitor caused.

K. Granting Short-term, Exclusive Use of Common Property

For common property that is not designated as limited common property, section 76 of the *SPA* enables the strata corporation to grant exclusive use to an owner or tenant. This permission can be made subject to conditions. Generally, this permission should be made in writing and recorded in strata council meeting minutes.

Permission for short-term exclusive use of common property can last for a maximum of one year. Afterwards, the strata corporation may choose to renew that permission, possibly with a different period or set of conditions. Short-term exclusive use of common property may be revoked by the strata corporation providing reasonable notice to the owner or tenant enjoying exclusive use, as long as doing so is not significantly unfair.

The most common use of section 76 is to assign owners to parking stalls that are common property. Another possible use of section 76 is common property that is only accessible through one strata lot, such as some yards or patios. Section 76 enables the strata corporation to regulate the area's use differently across time.

VI. GOVERNANCE OF THE STRATA CORPORATION

A. Role of the Strata Council

The strata corporation operates through the strata council (s. 4 of the SPA) and has the power and capacity of a natural person of full capacity (s. 2(2) of the SPA). Where the SPA references “the strata corporation,” it is referring to decisions of the strata council that exercise the strata corporation’s powers. The strata council is responsible for exercising the powers and performing the duties of the strata corporations, including enforcing the bylaws (SPA, s 26), and conducts business of the strata corporation subject to directions from the owners of the strata lots.

In exercising their powers, strata councils are empowered to make many decisions that affect the lives of the owners of the strata corporation. For instance, they may make decisions regarding the allocation and use of common property, or decisions concerning compliance with bylaws.

Strata councils are elected at annual general meetings, including the first annual general meeting called by the owner developer.

1. Mandate and Limitations

Under s. 4, the powers and duties of a strata corporation must be exercised by the strata council except where the SPA, the SPR, or the strata corporation’s bylaws provide otherwise.

Every reference to the SPA, the SPR, and a strata corporation’s bylaws to a “strata corporation” must be read as a reference to the strata council unless a clear contrary intention exists. For sections, the equivalent of the strata council is called the section executive.

a) Strata Council Duties

Unless there is a bylaw limiting its authority, the duties of a strata council include the following:

- Managing, maintaining, and repairing common property (s. 3);
- Establishing and maintaining an operating fund and a contingency reserve fund;
- Obtaining and maintaining liability insurance, and property insurance on the common property, common assets, and original building, including fixtures;
- Convening annual general meetings (s. 40) and special general meetings in response to owner demands (s. 43);
- Maintaining strata corporation and section records (s. 35) and making them available (s. 36); and
- Enforcing bylaws and rules of the strata corporation.

b) Matters Requiring Owner Approval

Strata lot owner approval is often required when making decisions in a number of areas, including finances, dealing with property, litigation, and strata plan changes. When owner approval is required, the strata council carries out the action in the name of the strata corporation. Often, authorizing resolutions are drafted to authorize one or two council members to execute the action.

The strata council must continuously decide whether they have jurisdiction over matters. Many sections of the SPA require approval only if certain criteria is met, like

making “significant change” (s. 71), or whether an immediate expenditure is “necessary to ensure safety” (s. 98(3)). In cases like these, the strata council may need legal counsel to give guidance over whether the strata council has jurisdiction.

c) *Matters Requiring Bylaw Authority*

Some matters may be dealt with by the strata council only if authorized by the strata corporation bylaws, including:

1. Charging interest on arrears (s. 107); and
2. Taking collection proceedings against an owner in Small Claims Court (s. 171(4)).

d) *Conflicts of Interest*

Under s 31 of the *SPA*, strata council members are required to act honestly and in good faith with a view to the best interests of the strata corporation. Acting in good faith, under Standard Bylaw 22, relieves a council member of liability for anything done in the performance of their duties.

From section 32 of the *SPA*, strata council members are required to disclose any direct or indirect conflicts of interest they may have in a contract or transaction with the strata corporation. In any other matter, if a duty or interest that contradicts their duty or interest as a strata council member may arise, that strata council member must similarly disclose the conflict of interest. In strata corporations that have formed sections, strata council members who are also part of a section may find that their interest as a section member frequently conflicts with their interest as a strata council member.

Strata council members with a conflict of interest must promptly disclose to the council the full nature and extent of the interest. They must then abstain from voting on the matter, as well as leave the strata council meeting during discussion and voting on the matter, unless the council requests the member to provide information (*SPA*, s 32).

If a strata council member fails to disclose their conflict of interest in a contract or transaction, the other owners may ratify it by a $\frac{3}{4}$ vote at an annual or special general meeting after receiving full disclosure of the conflict. If the owners fail to ratify the contract or transaction, the strata corporation or an owner can apply to the court for a remedy under section 33 of the *SPA*.

If the court finds that the contract or transaction was unreasonable or unfair to the strata corporation, it may order a remedy such as:

- Setting aside the contract;
- Ordering the strata council member to compensate the strata corporation’s resulting losses; or
- Ordering the strata council member to pay any of their resulting profits to the strata corporation.

e) *Standard of Care for Strata Council*

Section 31 of the *SPA* requires strata councils must act towards the best interests of the strata corporations, with honesty and good faith. In doing so, the strata must exercise the care, diligence, and skill of a reasonably prudent person in similar circumstances. See [*Dockside Brewing Co. Ltd. v Strata Plan LMS 3837, 2007 BCCA 183*](#) for an

application of section 31, which the Supreme Court of Canada would decline to overturn.

In [*Rochette v Bradburn*, 2021 BCSC 1752](#) at para 83, the court clarified that section 31 does not create a standalone right for a strata owner to sue a strata council over breaches of its standard of care. While section 31 does inform the standard of conduct from sections 32 and 33, a court action still must satisfy the requirements from section 33: a strata council member failing to adequately discharge their duty to disclose conflicts of interest, and the remaining owners failing to ratify the affected decision.

2. Strata Council Size and Composition

a) Composition and Terms of Office

Section 25 of the *SPA* provides that a full council must be elected at each annual general election. There are, however, bylaws that some strata corporations have adopted providing for staggered, multi-year terms of council members that help preserve continuity on the strata council.

Each strata council member must be elected, meaning that a bylaw purporting to appoint council members without election is unenforceable: see [*Marook Super Pty. Ltd v The Owners, Strata Plan KAS 2205*, 2019 BCCRT 906](#).

b) Eligibility

S. 28 states that the only persons who may be council members are owners, individuals representing corporate owners, and tenants who have been assigned a landlord's right to stand for council under s. 147 or s. 148. Bylaws can be made, however, to permit others to sit on the strata council, although [*Paget v Strata Plan LMS 1951*, 2021 BCSC 2111](#) held that a person acting under the authority of a power of attorney cannot sit as a member of a strata council.

If two or more persons own a strata lot, only one of them can sit on the strata council unless all strata lot owners are on the strata council. This includes corporate owners, who may only elect one representative to sit on the strata council with respect to each strata lot.

c) Size

Standard Bylaw 9 of the *SPA* states that the strata council must have at least three and no more than seven members. This gives the strata corporation the ability to choose to acclaim any eligible candidate if there are less than seven members or establish resolutions and adopt bylaws as mechanisms to determine the size of the council.

d) Elections of Strata Council Members

The first strata council is elected at the first annual general meeting, and thereafter at each annual general meeting, subject to the bylaws.

If the strata corporation's bylaws provide for a range of council members, as Standard Bylaw 9 does, there may be no mechanism for determining the actual size of the strata council. A common practice, in this case, is to name all nominees to the council if there are fewer nominations than the maximum number specified in the bylaw or by Standard Bylaw 9.

The issue raised from naming all nominees to council is that someone could be elected to council despite opposition from a majority of the owners. This could be addressed

by a bylaw amendment mandating that the number of council members may range from three to seven, as fixed from time to time by majority vote resolution at a general meeting, or a bylaw amendment mandating a specific form of balloting. Both methods could be subject to challenge under s. 164 if it is a departure from the established norm.

S. 50(1) of the SPA requires decisions at general meetings to be made by majority vote. This does not include elections by acclamation, as decided by the court in [*Yang v Re/Max Commercial Realty Associates \(482258 BC Ltd.\)*, 2016 BCSC 2147](#), although the court also said that it was still better practice to still require a vote unless a majority of the owners approve a resolution to have the election proceed by acclamation.

e) Removal

Standard Bylaw 11 provides that, unless all strata lot owners are on the strata council, one or more council members can be removed by a majority vote at a general meeting, although some strata corporations may pass bylaws requiring a higher threshold. The CRT in *Wong's Insurance Services Ltd. v Strata Plan LMS 3259*, [2022 BCCRT 831](#) held that there is a reasonable expectation that a strata council would provide to owners reasons for removal based on true facts.

f) Vacancies

Standard Bylaw 12 gives the strata council authority to fill vacancies created by the resignation or incapacitation of a council member, and preserves the ability of the remaining council members to do so even if they lack a quorum.

g) Renumeration

S. 34 of the SPA provides that any remuneration paid to a member of council for the member's exercise of council powers of performance of council duties must be approved in advance of payment in the budget, in the bylaws, or by a resolution passed by a $\frac{3}{4}$ vote at an annual general meeting.

3. Strata Council Powers

a) Capacity to Contract

S. 2 provides that a strata corporation has the power and capacity of a natural person of full capacity, subject to any limitation under the SPA or SPR. S. 38(a) clarifies the strata corporation's ability to enter contracts, providing that it may enter into contracts in respect of its powers and duties under the SPA, the SPR, and the bylaws.

b) Joining Organizations

S. 38(b) also clarifies s. 2 by providing that a strata corporation may join organizations to further its purposes under the SPA, the SPR, and its bylaws.

B. Strata Corporation Meetings

1. General Meetings of the Strata Corporation or a Section

a) Conduct of General Meetings

The SPA and Standard Bylaws do not have guidelines on the following matters:

- Whether and how business can be tabled to a future meeting;
- To what extent the meeting can amend the agenda prepared by the strata council;
- Whether and how a ruling of the chair can be challenged; and

- How elections of strata council and section executive members are conducted.

If these matters are not addressed by the strata corporation's bylaws, they are determined by the chair, subject to the right of any voter to initiate legal proceedings to challenge the conduct of the meeting. In legal proceedings, common law applicable to corporate proceedings, such as *Robert's Rules of Order* can be expected to govern as long as they are not taken advantage of to undermine democratic principles governing strata meetings, as held in *Strata Plan NW 971 v Daniels*, [2009 BCSC 1235](#).

b) Strata Corporation and Section Meetings

The strata council is not permitted to call meetings of sections. Section meetings are convened by the section executive, and are considered separate meetings with separate notices, agendas, proxied, quorums, resolutions, and minutes.

c) Types of General Meeting

Annual General Meeting

The first annual general meeting of a strata corporation is convened by the owner developer within a specified period following either the first conveyance or conveyance of 50 per cent plus one of the strata lots. Then, the strata council is responsible for holding annual general meetings within two months following each fiscal year-end (s. 40).

Special General Meeting

A special general meeting is any general meeting that is not an annual general meeting. It can be convened at any time by the strata council (s. 42) or demanded by the strata lot owners (s. 43). These are usually called to deal with a special levy, a contingency reserve fund expenditure, or a litigation matter.

d) Chair of General Meeting

Standard Bylaw 25 provides that the president chairs a general meeting of the strata corporation; in the absence of the president, the vice president in absence of both, a chair selected by the meeting. It should be noted, if a third party is selected, that the president and vice president both declined to chair.

e) General Meeting Notice and Delivery

S. 45 states that at least two weeks' written notice of a general meeting must be given to:

1. Strata lot owners;
2. Tenants who have been assigned the right to vote under s. 147 and 148; and
3. Mortgagees who have requested notifications of meetings under s. 60.

S. 45(2) permits that any person entitled to be notified can waive notice by a written notice, though such a waiver is revocable.

S. 61(1) provides how notice can be given to a strata lot owner or tenant entitled to notice. S. 61(1)(b) provides that if the strata lot owner or tenant has not given an address outside the strata plan for notice, it can be hand-delivered, put under the door, mailed, put through a mailbox, faxed to a number provided by the person, or emailed to an address provided by the person.

S. 61(1)(a) provides that if the strata lot owner or tenant has given an address outside the strata plan, only personal service or mail delivery are permitted. *Azura*

Management (Kelowna) Corp. v Strata Plan KAS 2428, [2009 BCSC 506](#) includes email delivery as part of the “mail” delivery requirement in 61(1)(a), going against the *Interpretation Act*, R.S.B.C. 1996, c. 238, which defines “mailing” as sending prepaid through the Canada Post Office.

S. 61(3) provides that a meeting notice is given, where not directly hand-delivered, four days after mailing, faxing, or emailing.

Notice of an annual or special general meeting must include (s. 45(3)):

1. A description of the matters that will be voted on at the meeting, including the proposed wording of any resolution requiring a $\frac{3}{4}$ vote, 80% vote, or unanimous vote;
2. The date, time and, if applicable, place of the meeting;
3. If attendance by telephone or other electronic means will be permitted, instructions for attending the meeting by electronic means.

This provision must be strictly adhered to, as the BCSC declared a bylaw amendment voted on at a general meeting to be void because the bylaw amendment was not included in the notice before the meeting in *453881 B.C. Ltd. v Strata Plan LMS 508*, [1994 CanLII 1412 \(BC SC\)](#). However, the court held in *Azura Management* that a $\frac{3}{4}$ vote approval had been approved despite not being referred to in the notice, so the current strength of s. 45(3) is unclear.

f) General Meeting Agenda

S. 46(1) provides that the strata council determines the agenda for a general meeting unless a resolution is proposed by a demand of owners under s. 46(2) or the meeting is demanded and called by voters under s. 43.

Then, once the meeting has begun, Standard Bylaw 28 provides that approval of the items in the agenda is one of the first items of business at a general meeting of a strata corporation.

g) Resolutions from the Floor

A general meeting notice must include a description of the matters that will be voted on (s. 45(3)). This requirement makes it clear that any resolution requiring a $\frac{3}{4}$ vote, 80% vote, or unanimous approval must be included in the meeting notice and cannot be raised from the floor. *Leung v Strata Corp. LMS 2835*, [2001 BCSC 1602](#) confirms this, as a council member was removed from his position during a heated debate at a general meeting, and the courts determined that the member should be reinstated.

It is not clear, however, if matters that require only majority vote approval are permitted from the floor. It may be the case that if a resolution from the floor directing the strata council under s. 27, that is to control their own powers, is related to an item of business included in the meeting notice, the resolution may be able to stand if it is amended to only require majority vote approval.

h) Owner Demands

Owners in a strata corporation can propose a resolution or raise a matter under s. 46(3) or demand a general meeting to consider a resolution or matter under s. 43 if the proposal/demand is signed by persons holding at least 20% of the strata corporation's votes. The owner is restricted from signing as part of the 20% if the strata corporation has a bylaw suspending the vote for a strata lot if the strata corporation is entitled to a lien.

S. 63(1) of the SPA provides the requirements for delivering a demand to a strata corporation. The demand can be:

- Hand-delivered to a council member;
- Mailed to the address of the strata corporation on record in the Land Title Office;
- Faxed to the number provided by a council or filed in the Land Title Office;
- Delivered using a mail slot or mailbox used by the strata corporation; or
- Emailed to the strata corporation's email address or to an email address provided by a strata council member for that purpose.

If not hand-delivered, the demand is deemed to have been given four days after mailing, faxing, mail-slotting, or emailing.

A s. 46 demand proposing a resolution or raising matter must be complied with at the next general meeting, whether that be annual or general.

A s. 43 demand compels the strata council to hold a special general meeting to consider the matter or resolution four weeks after the demand is given. If this is not complied with, the persons who signed the demand can set a special general meeting themselves held under the applicable provisions of the SPA and the bylaws.

i) Proxies

S. 56 permits strata lot owners, tenants, and mortgagees entitled to vote at a general meeting to do so by proxy, where the proxy:

1. Must be in writing and signed by the person appointing the proxy;
2. Can be general or for a specific meeting or resolution; and
3. Is always revocable (a later proxy must be considered to revoke an earlier one).

Text messages do not qualify a proxy, per *Hedberg v Strata Plan 511*, [2021 BCCRT 340](#). Unless limited by a strata corporation's bylaws to specify how a grantor's vote is to be exercised on one or more specific resolutions, a proxy appointment is unlimited and permits the proxy to participate fully in the meeting. Further restrictions on the limits of proxies in general meetings include:

- Proxies are not ballots, so they should not be drafted with "check boxes" for various resolutions (see *Curll v Strata Plan NW 2926*, [2021 BCCRT 504](#)).
- If a strata lot is owned by more than one person, either may give a proxy, but if both do, neither is valid.
- If the strata corporation has a bylaw suspending the vote for a strata lot if the strata corporation is entitled to register a lien, a proxy holder may not vote with respect to that strata lot.

As of July 18, 2023, the *SPR* does not contain any provisions governing the selection of proxies. As a result, the effect of section 56(3) of the *SPA* is that voters are permitted to appoint anyone as a proxy, except for employees of the strata corporation or persons who provide management services to the strata corporation. Strata corporations are not allowed to make any further restrictions on whom a voter may appoint as a proxy: see [The Owners, Strata Plan VR320 v Day](#), [2023 BCSC 364](#) at para 50.

j) Electronic Attendance

S. 49 of the SPA permits attendance at a general meeting to be done electronically by speakerphone, telephone conference, video conference, and web conference, as long as:

- The notice or the meeting given under s. 45 includes instructions for attending by electronic means;
- The electronic means permits all participants to communicate with each other; and
- The electronic means allows the meeting's chair to identify whether a participant attending by electronic means is an eligible voter.

An eligible voter attending by electronic means does not need a voting card and is not required or entitled to vote by secret ballot (s. 49(3)).

k) Quorum for a General Meeting

Unless specified differently in the strata corporation bylaws, s. 48 provides that a quorum for a general meeting is one-third of the votes, except where there are fewer than four strata lots or strata lot owners, in which case quorum is two-thirds.

Unless specified differently in the strata corporation bylaws, s. 48(3) provides that if there is no quorum within 30 minutes after the time specified in the meeting notice, the meeting is adjourned to the same day in the next week at the same place and time, if applicable. If, on that day, there is no quorum within 30 minutes after the specified time, the eligible voters then present constitute a quorum.

Under, s. 51(9), a meeting convened under s. 51 for the purpose of reconsidering a $\frac{3}{4}$ vote resolution is cancelled if it does not have a quorum within 30 minutes of the specified time. No bylaw can override this provision.

l) Eligible Voters

Defined

Voters at a general meeting are all "eligible voters", defined in s. 1(1) as all persons who may vote under ss. 53 to 58:

1. By default under s. 54, the registered owners of all strata lots, each with the voting power set out in the schedule of voting rights, if any, filed in the Land Title Office unless someone else is entitled to vote with respect to that strata lot as set out below;
2. Tenants who have the right to vote under s. 147 or 148;
3. Mortgagees whose mortgages give them the right to vote, if the requirements of ss. 54(1)(c) and 60 are met; and
4. The parent, guardian, or legal representative of one of the voters described above, or a voter appointed by the court.

Tenants

S. 147 provides that a tenant may be assigned a strata lot owner's right to vote, effective when written notice is given to the strata corporation setting out the tenant's name and specific details on the duties assigned and time period of assignment. If the tenant is leasing a residential strata for a fixed period of three years or more, the tenant is automatically entitled to exercise the powers of the owner under the SPA during the lease (s. 148), provided the strata corporation receives written notification.

Mortgage

A mortgagee may exercise the vote for a strata lot only for a matter in relation to finance, insurance, maintenance, or other matters affecting the mortgagee's security if:

1. The registered mortgage gives the mortgagee the right to vote; and
2. The mortgagee gives written notice to the strata corporation or section, to the owner, and to any tenant who has the right to vote, at least three days before the meeting.

Suspension of Voting Rights for Arrears

A strata corporation may, under s. 53(2), adopt a bylaw to automatically suspend the vote for a strata lot if the strata corporation is entitled to register a lien against that strata lot. In order for the strata corporation to be “entitled to register a lien” under s. 116(1), notice must have been given under s. 112(2) and at least two weeks must have passed. This excludes the day the notice was sent and the meeting day (s. 25 of the *Interpretation Act*). Delivery rules under s. 61 should govern as well.

Shared Vote

S. 57 provides that if two or more persons are entitled to vote with respect to a strata lot, only one can vote on a particular matter, and they can change who votes for each respective matter. If they disagree on how to cast their vote on a particular matter, their vote is not counted.

BBR Management Inc. v Strata Plan KAS 3359, [2022 BCCRT 1254](#) held that the rules provided by s. 57 apply where two or more persons share a vote of one, and not where multiple owners share multiple votes.

m) Voting and Types of Resolution

Polls and Secret Ballots

Standard Bylaw 27 provides for default voting by a show of voting cards, although the floor of the meeting may request for a “precise count” in which the chair is to decide the voting method. In any event, the bylaw gives any voter the right to demand a secret ballot.

If a secret ballot is held, a private area must be provided for voters to tender their ballots. If the secrecy of the ballots is not maintained, the vote and resulting resolution may be rendered void (*Imbeau v Strata Plan NW 971*, [2011 BCSC 801](#)).

Majority Vote

“Majority vote” is defined in s. 1(1) of the SPA as a vote in favour of a resolution by more than one-half of the votes cast by eligible voters present in person or by proxy, and who have not abstained from voting. Abstention drops the threshold for passage of a resolution. For example, if 10 voters are present and one abstains, five votes is enough to make a majority vote. Majority vote is the default threshold for decisions at general meetings of a strata corporation (s. 50(1)). If the majority vote resolution had 50 per cent support, the president or vice president has a second vote under Standard Bylaw 27.

$\frac{3}{4}$ Vote

“ $\frac{3}{4}$ vote” is defined in s. 1(1) as a vote in favour of a resolution by at least three-quarters of the votes cast by eligible voters present in person or by proxy, and who have not abstained from voting. The same abstention rules of majority votes apply, however, if abstentions result in a $\frac{3}{4}$ vote being passed with less than 50 per cent of the total votes in the strata corporation, s. 51 provides that the vote may be reconsidered at another general meeting. The proposed wording of any $\frac{3}{4}$ vote resolution must be included in the meeting notice, per s. 45(3).

80% Vote

“80% vote” is defined in s. 1(1) as a vote in favour by at least 80% of all eligible voters, unlike 80% of those in attendance in person or by proxy for majority vote or $\frac{3}{4}$ vote. This also means that abstentions and no-shows do not drop the threshold, they instead act as a vote against the resolution. 80% votes are required only in respect of a strata plan cancellation pursuant to s. 272 (without a liquidator) or s. 277 (with a liquidator). The proposed wording of any 80% vote resolution must be included in the meeting notice, per s. 45(3).

Unanimous Vote

Unanimous vote is defined in s. 1(1) of the SPA as a vote in favour by all votes of eligible voters. Similar to the 80% vote, abstentions do not lower the threshold and instead act as a vote against the resolution. Per s. 57(2) of the SPA, if two or more persons are entitled to vote, only one of them still may vote, and that vote must be in favour without a sense of disagreement. The proposed wording of a unanimous vote must be included in the meeting notice, per s. 45(3).

There is an exception in s. 52 allowing the strata corporation to pass a unanimous vote without getting affirmative votes from all eligible voters. The court can order that a unanimous vote proceed without receiving if votes in favour from all eligible voters if the following conditions are met:

- a) More than 95% of the votes are in favour of the passage of the unanimous resolution in a strata corporation consisting of lots with at least 10 votes,
- b) Its passage is in the best interest of the strata corporation,
- c) And its passage would not unfairly prejudice the dissenting voter or voters.

Consent Resolutions

Under ss. 41 and 44, the owners in a strata corporation can waive the holding of an annual or special general meeting to pass a unanimous vote via unanimous written consent if the consent resolution is signed by all strata lot owners registered on title or entities assigned the right to vote. This consent resolution can be initiated by any eligible voter, and abstentions and no-shows are counted as votes against the consent resolution.

This is contrary to the requirement of a meeting in the mortgagee notification procedure in s. 54(1)(c). To get around this, written consent should be obtained of every mortgagee if the matter is in relation to insurance, maintenance, finance, or other matters affecting the security of the mortgage.

An owner of a strata lot whose vote is suspended for a lienable strata lot maintains its ability to vote on resolutions requiring a unanimous vote (s. 53). S. 53 also lists sections in which such strata lot's vote is not counted, and ss. 41 and 44 are not included in that list. It follows, then, that written consent must be obtained from such owners to pass a consent resolution.

2. Council and Section Executive Meetings

Under s. 26, strata council business must be conducted in accordance with the SPA, the SPR, and the bylaws.

a) Elections of Officers

Although the SPA does not require a strata corporation to have officers, Bylaw 13 refers to officers and mandates elections of a president, vice president, secretary, and a treasurer. The president has the deciding vote in council meetings (Bylaw 18(2)) and general meetings (Bylaw 27(5)).

In absence of bylaw provisions stating otherwise, officers can be removed by majority vote at a council meeting.

b) Calling

Any council member can call a strata council meeting on one week's notice (Bylaw 14).

Azura Management (Kelowna) Corp. v Strata Plan KAS 2428, [2009 BCSC 506](#) and *Yang v Re/Max Commercial Realty Associates (482258 BC Ltd.)*, [2016 BCSC 2147](#) both confirm that meetings can be done over email as long as minutes are provided for them, but the CRT in *Starr v Strata Plan EPS 59*, [2019 BCCRT 778](#) advised that any decisions made during an official meeting over email should be validated and voted on.

c) Right to a Hearing

Under s. 34.1 of the SPA, if a strata lot owner requests a hearing at a council meeting in writing stating the reason for the request, the council must hold a meeting within four weeks to hear the applicant. This right cannot be repealed by a bylaw amendment. Within one week of the hearing, the council must provide a written decision (SPA, s. 34.1(3)).

d) Quorum for Strata Council Meetings

Quorum for strata council meetings is governed by their bylaws. Bylaw 16 defines the quorum as:

- A. One, if the strata council consists of one member;
- B. Two, if the strata council consists of two, three, or four members;
- C. Three, if the strata council consists of five or six members; or
- D. Four, if the strata council consists of seven members.

e) Electronic Means

Provided all council members can communicate with each other, electronic attendance is permitted at meetings (Bylaw 17). This bylaw also discourages polling council members on issues by telephone or email, because the rest of the members cannot communicate with each other.

Asynchronous meetings are permitted as long as all parties can communicate with each other over a period of time, review all discussion on a particular matter, and votes can be recorded using chat-room or meeting software.

f) Strata Council Meeting Attendees

Chair

It is open to the strata council to organize meetings as it sees fit, and there is no requirement for the president or any other council member to chair council meetings.

No Proxies

Bylaw 16(2) requires council members to be present to be counted in the quorum, and bylaw 18 permits only those present (including by electronic means) to vote. Therefore, proxies are not permitted under the Standard Bylaws.

Observers

While the SPA contains no provisions regarding observers, Bylaw 17 provides that observers to meetings must be excluded when dealing with bylaw contraventions and other matters if the observers' presence would unreasonably interfere with an individual's privacy.

Owners Adverse in Litigation

Under ss. 169 and 176 of the SPA, a strata lot owner who is adverse to a strata corporation in litigation or arbitration is not entitled to attend those portions of strata council meetings dealing with the litigation.

g) Voting

Majority

While the SPA does not have provisions on the decision-making processes at council meetings, Bylaw 18 mandates decisions by majority vote of those council members present, either by electronic means or in person.

Casting Vote

The president of a strata corporation has a casting vote in the case of a tie, except in the case of a two-lot strata plan (Bylaw 18).

C. Meeting Minutes

1. Meetings that Require Minutes

S. 35 provides that minutes must be taken at every general meeting and every council meeting. Committees of the council and informal discussions among council members need not have minutes taken.

2. Contents of Minutes

S. 35(1) provides that, at a minimum, minutes must contain any votes taken at a strata council meeting or general meeting. The CRT in *Claridge v Strata Plan LMS 223*, [2020 BCCRT 161](#) found that if a strata corporation includes minutes more detailed than the minimum provided by s. 35(1), the minutes must be reasonably accurate so that they do not mislead the owners.

D. Strata Corporation Recordkeeping

1. Retention of Records

Under s. 35, every strata corporation must prepare the following records and retain them for the periods indicated under s. 4.1 of the SPR:

1. Minutes of general meetings and strata council meetings (six years);
2. A list of council members with phone numbers and/or emergency contact details under s. 4.1(1) of the SPR;
3. A list of strata lot owners and tenants, mortgagees who have requested notices of meetings and money owing under s. 60, and assignments of voting rights to tenants under ss. 147 and 148; and
4. Books of account (six years).

Under s. 35, a strata corporation must retain copies of the following, for the periods indicated, under s. 35 of the SPA and s. 4.1 of the SPR:

1. The strata plan and amendments (permanently);
2. The SPA and SPR (current copies);

3. The strata corporation's bylaws and rules (current copies);
4. Common property resolutions under ss. 71, 74, and 75 of the SPA (permanently);
5. Waivers of general meeting notices and consents resolutions under ss. 41, 44, and 45 (six years);
6. Contracts including insurance policies (six years after termination);
7. Decisions of judges, arbitrators, and the CRT in matters to which the strata corporation is a party, and legal opinions obtained by the strata corporation (permanently);
8. Budgets and financial statements (six years);
9. Income tax returns (six years);
10. Correspondence (two years);
11. Bank statements and supporting documents (six years);
12. Form B information certificates (six years);
13. Building permit plans obtained from the owner developer under s. 20 (permanently);
14. As-built drawings obtained from the owner developer (permanently);
15. Contracts, including insurance policies, entered into by the owner developer on behalf of the strata corporation (six years after termination);
16. Disclosure statements filed by the owner developer (permanently);
17. Information on contractors who supplied labour and materials to the project, obtained from the owner developer (permanently);
18. Warranties related to common property and assets, obtained from the owner developer (until expiration of warranty or disposal of asset);
19. Manuals and plans related to common property and assets, obtained from the owner developer (until disposal of the asset);
20. Financial records obtained from the owner developer (six years); and
21. Depreciation reports under s. 94 (permanently) and any reports respecting maintenance or repair of major items (until the items are disposed of or replaced).

2. Location of Records

The SPA does not specify the location at which records must be kept, but the onerous requirements of s. 35 make some approaches (like retaining records in the possession of one or more strata council members) riskier than others.

3. Records Disclosure and Production Requirements

All s. 35 records must be available to:

1. Strata lot owners;
2. Tenants who have been assigned an owner's right to inspect records under s. 147 or 148, and anyone authorized by them in writing; and
3. Former owners and former tenants, with respect to documents relating to their period of ownership or tenancy.

The strata corporation must comply with requests for access to records within two weeks (s. 36) or, if the request is regarding the rules or bylaws, within one week. The CRT has held in *Slack v Strata Plan EPS 4413*, [2022 BCCRT 681](#) that document requests must be reasonable, and it was not reasonable to essentially request to review all records that the strata corporation was required to keep under s. 35.

A strata corporation has no obligation to retain, create, or disclose any documents not listed in section 35 of the SPA.

4. Keeping and Producing “Controversial” Records

Strata corporation records may be considered controversial for several reasons, although these reasons generally do not affect the strata corporation's disclosure requirements:

1. They may contain information related to litigation that is privileged under s. 169 of the SPA;
2. They may contain information, such as legal advice, obtained by the strata council in contemplation of litigation;
3. They may contain documents that include potentially defamatory statements;
4. They may contain strata lot owners' submissions and other information related to bylaw contraventions or fines; and
5. They may contain "personal information" under the [*Personal Information Protection Act*](#), S.B.C. 2003, c. 63

With respect to information related to litigation that has not yet commenced (such as legal opinions), [*Strata Plan VR 1120 v Mitchinson*](#), 2022 BCSC 2054 held that this kind of information protected by common law solicitor-client privilege cannot be disclosed to the owner adverse to the strata corporation in the dispute.

5. Consequences of Refusal to Produce Records

If a strata corporation refuses to give access to information to a person entitled to it under s. 36, the person is entitled to seek a court order under s. 165 compelling the strata corporation to comply, and likely gain an award of costs. They can also seek an order to provide documents from the CRT.

As discussed, the corporation can claim solicitor-client privilege over communications with legal counsel in appropriate circumstances, but [*Mason v Strata Plan BCS 4338*](#), 2017 BCCRT 47 held that the corporation cannot redact personal information from complaint letters and other records of a strata corporation.

VII. STRATA MANAGEMENT

A. *Introduction to Strata Management*

The most common type of management of a strata corporation in British Columbia, and the primary focus of this section, is a professional, third-party strata manager who is licensed by BF Financial Services Authority (“BCFSA”) and bound by the provisions of the [Real Estate Services Act, S.B.C. 2004, c. 42](#) (“RESA”) and the [Real Estate Services Rules, B.C. Reg. 209/2021](#) (“Real Estate Rules”). This manager is contractually engaged by a strata corporation to provide “strata management services” as defined in s. 1 of RESA.

Less commonly, in other cases, strata corporations can choose to be self-managed with no licensing requirements. S. 2.17 of the [Real Estate Services Regulation, B.C. Reg. 506/2004](#) (“RES Regulation”) permits an unlicensed individual to provide strata management services to a maximum of two strata corporations to which the person is an owner.

1. **Definition of Strata Management**

Neither the SPA nor the SPR provide definitions for the term “strata management”, but there are references to the term in each. For example, s. 37 of the SPA and s. 4.3 of the SPR both refer to the strata management as “providing the strata management services”.

B. *The Contractual Relationship*

1. **Power and Capacity of a Strata Corporation to Contract**

S. 2(2) of the SPA states that a strata corporation has the power and capacity of a natural person of full capacity. This includes the ability to enter into contracts in respect of its powers and duties under the SPA, the SPR, and the bylaws. Therefore, the strata corporation is permitted to enter into contracts for the provision of strata management services.

2. **Contract Decisions**

The SPA and the courts (Enefer v Strata Plan LMS 1564, [2005 BCSC 1866 \(Chambers\)](#)) give the strata council permission to make decisions regarding contracting parties, including with which parties the strata corporation will contract.

If funds being spent by a strata corporation occur more frequently than once a year, the SPA requires that the expenditure is approved in a budget before funds are spent. Only after the expenditure is approved and the budget that includes the expenditure is approved by the strata law owners, can the strata council enter into a contract with a strata manager of its choice.

3. **Termination of Strata Management Contract**

S. 39.1 of the SPA permits a strata management contract to be terminated by a strata corporation on two months’ notice if the cancellation passes a $\frac{3}{4}$ vote at an annual or special general meeting, regardless of any termination provisions in the strata management contract. The other party can terminate on two months’ notice without prior approval.

S. 39.2 clarifies that the only time a $\frac{3}{4}$ vote is not needed by the strata corporation to cancel a contract is when the contract could be terminated according to its terms if they are not onerous.

Within four weeks of the termination of a contract, s. 37 confirms that the person(s) providing strata management must return the strata corporation’s records, subject to a \$1,000 penalty if they do fail to do so per s. 4.3 of the SPR.

C. *Role of the Strata Manager*

1. Exercise of Delegated Power and Duties

A strata manager exercises delegated powers and duties of a strata corporation and can often act as chair of general meetings and facilitate part of the strata council's business, although the strata manager is under the instruction of the strata council.

2. Principal/Agency Relationship

Unless specifically stated otherwise, a strata manager acts as an agent of the strata corporation, authorized to act on the strata corporation's behalf when dealing with other parties, issuing forms and records, and entering into contracts.

The common law has developed duties that an agent (strata manager) owes to its principal (strata corporation), referred to as fiduciary duties. S. 56 and s. 58 of the Real Estate Rules give examples of those fiduciary duties in the disclosure of remuneration and disclosure of the nature and extent of benefits in relation to rental property management services and strata management services.

Further, s. 30 of the Real Estate Rules set out requirements for a "brokerage" and its "related licensees", in this case the strata manager, when providing services to a client. S. 33 and s. 34 add additional requirements to act honestly and with reasonable care and skill when providing real estate services, respectively.

3. Strata Management Correspondence

The strata manager will receive and send correspondence on behalf of the strata corporation or strata council. Such correspondence will form part of the records of the strata corporation, unlike communication amongst strata council members, as held by the CRT in *Hamilton v Strata Plan NWS 1018*, [2017 BCCRT 141](#).

VIII. STRATA CORPORATION FINANCES

A. *Introduction to Strata Corporation Finances*

A strata corporation collects funds from the owners to fulfill many of its duties. Funds are collected and allocated to the strata corporation's operating fund, contingency reserve fund, or a special levy fund. The funds are spent in accordance with the authority granted at an annual or special general meeting and within the confines of the SPA and its SPR.

B. *Operating Fund*

1. **Purpose of Operating Fund**

Each strata corporation must establish an operating fund (*SPA*, s 92) to be used for common expenses that occur either once a year or more often than once a year. Examples include landscaping, management fees, annual inspection fees, and office and administrative expenses.

a) *Common Expenses*

Under s 1(1) of the SPA, "common expenses" is defined as those expenses:

1. Relating to the common property and common assets of the strata corporation;
or
2. Required to meet any other purpose or obligation of the strata corporation.

b) *Strata Fees*

To create the operating fund, each owner contributes fees that are determined by reference to the budget approved at the annual general meeting. These fees are generally a strata corporation's primary source of income. The default formula to calculate strata fees is set out in s 99:

$$\frac{\text{Unit Entitlement of Strata Lot}}{\text{Entitlement of all Strata Lots}} \times \text{Total Contributions}$$

Per s 107(1), interest can be charged by bylaw on late payments so long as the rate of interest does not exceed what is set out by the SPR, which is currently 10% per annum, compounded annually.

2. **Approval Requirements**

S 13(1) of the SPA requires the owner developer to prepare an interim budget for the strata corporation for a 12-month period beginning on the first day of the month following the month in which the first conveyance of a strata lot to a purchaser occurs. This interim budget must include:

- The estimated operating expenses of the strata corporation for the 12-month period;
- The contribution to the operating fund for the 12-month period, which must be at least 5% of the estimated operating expenses; and
- Each strata lot's monthly share of the expenses calculated by the formula in s 99.

For every fiscal period following the first annual general meeting, a strata corporation must prepare a budget for the coming fiscal year (s 103(1)), which is to be distributed with the notice of the annual general meeting in accordance with s 45 and approved by a resolution

passed by a majority vote at each annual general meeting. If a budget is not approved at an annual general meeting, a subsequent special general meeting must be held to approve a budget (s 104).

The budget must include the following information (s 6.6(1) of the SPR):

- (a) The opening balance in the operating fund and the contingency reserve fund;
- (b) The estimated income from all sources other than strata fees, itemized by source;
- (c) The estimated expenditures out of the operating fund, itemized by category of expenditure;
- (d) The total of all contributions to the operating fund;
- (e) The total of all contributions to the contingency reserve fund;
- (f) Each strata lot's monthly contribution to the operating fund;
- (g) Each strata lot's monthly contribution to the contingency reserve fund;
- (h) The estimated balance in the operating fund at the end of the fiscal year;
- (i) The estimated balance in the contingency reserve fund at the end of the fiscal year.

3. Amendment of Budget

Before the budget is put to vote at an annual general meeting, the proposed budget may be amended by majority vote of the owners at the meeting (s 103(4)). There is nothing in the SPA that allows for amendments to the budget after it is approved at the annual general meeting, although the CRT suggested at para 64 in [*Gulf Manufacturing Ltd v Strata Plan BCS 1348*](#), 2019 BCCRT 16 that a special general meeting could be called and a revised budget could be approved.

4. Failure to Approve Budget

If the proposed budget is not approved by a majority vote at an annual general meeting, the strata corporation must prepare a new one within 30 days and place it before a special general meeting for approval by a resolution passed by a majority vote, unless a longer period was approved by a resolution passed by a $\frac{3}{4}$ vote at the annual general meeting (s 104(1)). If the fiscal period ends before a new budget is approved, the previous budget continues in effect.

5. Operating Fund Expenditures Not Approved in the Budget

If an expenditure is not in the budget, it can be made from the operating fund if it is approved by a resolution passed by a $\frac{3}{4}$ vote at an annual or special general meeting (s 97(b)) and complies with s 98. The total amount of unapproved expenditures must be:

- 1. Less than the amount set out in the strata corporation's bylaws, or
- 2. If the bylaws are silent, the lessor of
 - i. \$2,000, or
 - ii. 5% of the total contribution to the operating fund of the current year.

S 98 also allows for "emergency"-type expenditures (s 98(3)) if there are reasonable grounds to believe that an immediate expenditure is necessary to ensure safety or prevent significant loss or damage. The strata corporation must inform owners as soon as feasible about any expenditure of this type being made (s 98(6)).

6. Surpluses and Deficits

Unless accrued in the period before the first annual general meeting or otherwise determined by a resolution passed by a $\frac{3}{4}$ vote at an annual or special general meeting (s 105(1)), a surplus (actual expenses are less than contributions to the operating fund) must be dealt with in one or more of the following ways:

- Transferred into the CRF;
- Carried forward as part of the operating fund as a surplus; or
- Used to reduce the total contribution to the next fiscal year's operating fund.

For surpluses accruing during the period before the first annual general meeting, the strata corporation must refund the surplus to the strata lot owners in amounts proportional to their contributions, unless no strata lot owner is entitled to receive more than \$100 in total (s 14(6)), then the surplus can be deposited in the CRF (s 14(7)).

Unless accrued in the period before the first annual general meeting, the strata corporation must eliminate the deficit during the next fiscal year (s 105(2)) by one of the following ways:

- Transferred from the CRF, provided the transfer is approved by a $\frac{3}{4}$ vote;
- Increasing strata fees to include payment towards the deficit; or
- Assessing a special levy against the strata lot owners to eliminate the deficit, provided that the strata corporation approves the levy by a $\frac{3}{4}$ vote.

For deficits accrued during the period before the first annual general meeting, the owner developer must pay the difference to the strata corporation within eight weeks of the first annual general meeting (s 14(4)). If the actual expenditures for this period before the first annual general meeting exceed budget expenditures by between 10 and 20%, the owner developer must pay twice the actual deficit to the strata corporation, and if the expenditures exceed the budget by more than 20%, the owner developer must pay three times the actual deficit to the strata corporation (s 14(5)).

7. Interfund Transfers

Funding can be transferred from one fund to another if they are included in the approved budget or were approved by a resolution that was passed by a $\frac{3}{4}$ vote at a general meeting. Transfers from the CRF must be approved by a $\frac{3}{4}$ vote resolution unless (s 6.3 of the SPR):

1. The loan is repaid by the end of that fiscal year of the strata corporation; and
2. The loan is for the purpose of covering temporary cash flow shortages as described in the provision.

8. User Fees and Other Income

Other than strata fees, a strata corporation may have other sources of income that include user fees, interest income, rental income, and fines, and more.

User fees cannot be collected from the strata corporation for the use of common property or common assets unless, per s 6.9 of the SPR, the fee is objectively reasonable and set out in a bylaw or rule that has been ratified by majority vote at an annual or special general meeting.

Interest earned on money held on a special levy or CRF forms part of their respective funds (s. 95(3) and s. 108(7)).

C. Special Levies

1. Approval and Form of Resolution

A special levy is money collected from strata lot owners for a specific purpose and for shared common expenses. Strata corporation may raise money from the strata lot owners

by means of a special levy (s 108(1) of the SPA) as long as it is approved by the owners by way of a resolution passed at an annual or special general meeting. A special levy that is calculated using the formula in s 99 of the SPA or a different formula that meets s 100 of the SPA must be passed by a $\frac{3}{4}$ vote at an annual or special general meeting (s 108(2)(a)).

If the corporation is unable to approve a special levy resolution to effect repairs and maintenance that are necessary to ensure safety or prevent significant loss of damage, s 173(2) allows a strata corporation to apply to the Supreme Court for an order to approve the special levy resolution. There is no need to prove that the repairs are “crucial” or the threat of loss or damage is “immediate” ([*Strata Plan VIS 114 v John Doe*](#), 2015 BCSC 13).

2. Purpose of Special Levies

The special levy must be used only for the specific use stipulated in the resolution that approved the special levy. A special levy is useful in that it gives the strata corporation the ability to undertake expenses that cannot be funded from either the operating fund or the CRF.

3. Reporting Requirements

A strata corporation must inform the strata lot owners about the expenditure of the funds collected by way of special levy and any interest earned on the special levy (s 108(4)(d) and (7)). The funds can only be invested in investments permitted by the SPR or insured accounts with savings institutions in British Columbia, or both (s 108(4)(b)).

4. Payment When Strata Lot Sold

If a special levy is approved before a strata lot is conveyed to a purchaser, s 109 of the SPA provides that:

- (a) The person who is the owner of the strata lot immediately before the date the strata lot is conveyed owes the strata corporation the portion of the levy that is payable before the date the strata lot is conveyed, and
- (b) The person who is the owner of the strata lot immediately after the date the strata lot is conveyed owes the strata corporation the portion of the levy that is payable on or after the date the strata lot is conveyed.

5. Disposition of Surplus Funds

Funds that are surplus from a special levy must be paid to each strata lot owner the portion of the unused amount proportional to the contribution made to the special levy in respect of that strata lot (s 108(5)). If no strata lot owner is entitled to receive more than \$100, the strata corporation can instead deposit the total surplus funds into the CRF (s 108(6)). If the owner is new, [*Gaudin v Strata Plan LMS 2140*](#), 2020 BCCRT 607 confirmed that it is the strata lot owner at the time the refund is made that is entitled to receive the refund.

D. Borrowing by Strata Corporation

The strata corporation may borrow money required to exercise its powers and perform its duties after approval by a resolution passed by a $\frac{3}{4}$ vote at an annual or special general meeting (s 111 of the SPA). A strata corporation can lend money from its CRF to the operating fund (s 95(4)) if the amount is repaid by the end of the strata corporation’s fiscal year and the loan is used for the purpose of covering temporary shortages in the operating fund (s. 6.3 of the SPR).

E. Contingency Reserve Fund

The contingency reserve fund (CRF) is the fund established by the strata corporation to meet its obligations to pay for common expenses that occur less often than once a year or that do not usually occur (ss. 1 and 92).

1. Annual Budget Contributions

The amount of the annual contribution to the CRF for the fiscal year following the first general meeting must be determined as follows (s 3.4 of the SPR):

- (a) if the amount of money in the contingency reserve fund at the time of the first annual general meeting is less than 25% of the estimated operating expenses for the 12 month period set out in the interim budget, the annual contribution to the contingency reserve fund under the first annual budget must be at least 10% of the total amount budgeted for the contribution to the operating fund for the 12 month period covered by that budget;
- (b) if the amount of money in the contingency reserve fund at the time of the first annual general meeting is at least 25% of the estimated operating expenses for the 12 month period set out in the interim budget, additional contributions to the contingency reserve fund may be made as part of the annual budget approval process after consideration of the depreciation report, if any, obtained under section 94 of the SPA.

The amount of the annual contribution to the CRF for any other fiscal year must be determined as follows (s 6.1 of the SPR):

- (a) if the amount of money in the contingency reserve fund at the end of any fiscal year after the first annual general meeting is less than 25% of the total amount budgeted for the contribution to the operating fund for the fiscal year that has just ended, the annual contribution to the contingency reserve fund for the current fiscal year must be at least the lesser of
 - i. 10% of the total amount budgeted for the contribution to the operating fund for the current fiscal year, and
 - ii. the amount required to bring the contingency reserve fund to at least 25% of the total amount budgeted for the contribution to the operating fund for the current fiscal year;
- (b) if the amount of money in the contingency reserve fund at the end of any fiscal year after the first annual general meeting is equal to or greater than 25% of the total amount budgeted for the contribution to the operating fund for the fiscal year that has just ended, additional contributions to the contingency reserve fund may be made as part of the annual budget approval process after consideration of the depreciation report, if any, obtained under section 94 of the SPA.

2. Capital Planning and Depreciation Reports

Depreciation reports tell a strata corporation what common property and assets it has and what are the projected maintenance, repair, and replacement costs over a 30-year time span. These reports help assist strata corporations plan for major expenses and plan when to use their contingency reserve fund.

It is mandatory for most strata corporations to obtain a first depreciation report (s 94) and subsequent depreciation reports no later than three years after the date of the strata corporation's previous report (s. 94(2)). Strata corporations consisting of fewer than five strata lots are exempt (s 94(3)), and a strata corporation can waive the requirement by a resolution passed by a $\frac{3}{4}$ vote at a general meeting held in the one-year period immediately preceding the date the depreciation report is due (s 94(3)(a)).

Depreciation reports must be prepared by a “qualified person” (s 94(1)) defined in s 6.2(6) of the SPR as: “any person who has the knowledge and expertise to understand the individual components, scope and complexity of the strata corporation’s common property, common assets and those parts of a strata lot or limited common property, or both, that the strata corporation is responsible to maintain or repair under the SPA, the strata corporation’s bylaws or an agreement with an owner.”

Other requirements and standards of depreciation reports can be found in s 6.2 of the SPR.

3. Approval of Expenditures

There are exceptions to the rule in s. 96 that permit expenditures to be made from the CRF only if they are first approved by a resolution passed by a $\frac{3}{4}$ vote at an annual or special general meeting. A majority vote can be sufficient if the expenditure is necessary to obtain a depreciation report under s 94 or related to the repair, maintenance, or replacement of common property or common assets that is recommended in the most recent depreciation report. In addition, if there are reasonable grounds to believe an immediate expenditure is necessary to ensure safety or prevent significant loss or damage, the expenditure can be made out of the CRF if the expenditure is for a common expense that occurs less often than once a year or does not normally occur (s 98(3)) and the expenditure does not exceed the minimum amount needed to ensure safety or prevent significant loss or damage (s 98(4)).

F. Allocating Expenses

1. Two Main Issues with Allocating Expenses

a) Unit Entitlement or Not

Generally, all owners must contribute to the costs of repair and maintenance in accordance with unit entitlement, as decided by the courts in [*Strata Plan LMS 1537 v Alvarez*](#), 2003 BCSC 1075.

b) Everyone, or Allocate to Individuals

There are, however, exceptions in which common expenses are allocated using a different formula than the formula in s 99 (s 100(1)). For example, certain common expenses that relate to and benefit only limited common property can be allocated to only those strata lot owners entitled to the use of that limited common property. If different “types” of strata laws are distinguished by the bylaws, common expenses that relate to and benefit a particular type of strata lot can be allocated to only the strata lots of that type.

2. Unit Entitlement

a) Relating to Owners

“Unit Entitlement” is the number used in calculations to determine the strata lot’s share of common property, common assets, common expenses, and common liabilities of the strata corporation (s 1(1)). The SPA and the SPR require the calculation of contributions to the operating fund, the contingency reserve fund, and a special levy to be based on unit entitlement. Otherwise, if a strata corporation has failed to calculate contributions to the operating fund in accordance with unit entitlement, the owner may be able to obtain an order from the CRT requiring the corporation to determine the correct strata fee calculations.

b) Relating to Limited Common Property

Provided there is no alternate formula adopted by way of a s 100 resolution, the SPR allows for the formula in s 99 to be amended for operating fund expenses that relate to and benefit only limited common property as follows:

$$\frac{\text{Unit entitlement of strata lot}}{\text{Total unit entitlement of all strata lots whose owners are entitled to the use of limited common property to which the contribution relates}} \times \text{contribution to operating fund}$$

That formula cannot be used for contributions to the contingency reserve fund and special levies. Instead, the contributions are allocated among all of the owners as follows:

$$\frac{\text{Unit entitlement of strata lot}}{\text{Total unit entitlement of all strata lots}} \times \text{Total contribution to CRF or special levy}$$

3. Section 100 Resolutions

S 100 of the SPA allows a strata corporation to adopt a different formula than the default one set out in 99 if such is approved by a resolution passed by a unanimous vote after the first annual general meeting (s 100(1)).

a) *Operating Fund*

S 100 resolutions can provide an alternate formula for the entire operating fund, such that no expenses outlined in the budget are apportioned by unit entitlement, or for only certain expenses from the operating fund. Courts can also impose s 100 resolutions, like in [*Shaw v Strata Plan LMS 3972*](#), 2008 BCSC 453 when the court found unit entitlement allocation of expenses to be significantly unfair due to the strata corporation consisting of two sections, residential and commercial.

b) *Contingency Reserve Fund*

Similarly, s 100 resolutions can apply to either all contributions to the CRF or only with respect to certain expenses. S 100 resolutions can allocate expenses relating to limited common property to only those strata lot owners that have exclusive use of the limited common property, and s 100 resolutions can allocate expenses that would benefit specific types of strata lots to only strata lots of that particular type.

c) *Special Levies*

Section 100 resolutions may also apply to special levies under s. 108(2)(a) of the SPA. This suggests that if all common expenses are subject to an alternate formula under s. 100, the contribution to a special levy, by default, will be allocated in the same way. However, s. 100 itself does not refer to special levies.

Section 108(2)(b) provides a similar mechanism to a s. 100 resolution. If there is another way that establishes a fair division of expenses for a particular special levy, the strata corporation may use that alternate division, but in order to do so, the special levy must be approved by a resolution passed by unanimous vote at an annual or special general meeting.

IX. COLLECTIONS BY STRATA CORPORATIONS

A. When Strata Lot Owners are Indebted to the Strata Corporation

1. How Strata Lot Owners Become Indebted to the Strata Corporation

A strata lot owner may become indebted to the strata corporation in several ways, including:

- The owner may be in arrears of strata fees or special levies;
- The owner could owe interest on outstanding strata fees; and/or
- The owner may owe money for fines or costs of remedying if they have contravened a bylaw.

2. Treatment of Debt Owed to a Strata Corporation

a) Methods of Debt Collection by a Strata Corporation

A strata corporation can collect a debt by a:

1. Forced sale proceeding;
2. Arbitration proceeding; or
3. An action in debt.

Owners and strata corporations can also resolve disputes over debts at the Civil Resolution Tribunal.

b) When the Strata Corporation is a Respondent

A strata corporation can also be named as a respondent in a foreclosure proceeding commenced by a mortgagee, during which the strata corporation can ensure the court makes an order to pay certain amounts that may be owing to the strata corporation.

B. Forced Sale Proceedings

Forced sale proceedings can only be used as an action taken to enforce a Certificate of Lien (Form G of the SPR). A corporation can only register a Certificate of Lien against an owner's strata lot if the owner fails to pay any of the following (SPA, s 116(1)):

1. Strata fees;
2. A special levy;
3. A reimbursement of the cost of work referred to in s 85 of the SPA; and
4. The strata lot's share of a judgement against the strata corporation.

C. Court and Arbitration Proceedings

1. Amounts Owing Under the Certificate of Lien

Instead of proceeding directly with forced sale proceedings, the strata corporation may commence an action in debt in the Provincial Court (if the amount claimed is less than \$35,000), Supreme Court, or initiate arbitration proceedings. For any of these options, the commencement must be authorized by a $\frac{3}{4}$ vote resolution in accordance with s 171. The commencement of a lawsuit in Provincial Court does not need a $\frac{3}{4}$ vote if the corporation has a bylaw that dispenses of that requirement. The limitation period for an action in debt is two years.

Alternatively, such actions can be claimed at the Civil Resolution Tribunal, which has no monetary limit.

2. Collection of Non-Lienable Amounts

An owner can be indebted to a strata corporation for several items that cannot be included in a Certificate of Lien, including:

1. Fines;
2. Costs of remedying bylaw contraventions;
3. Insurance deductibles;
4. Administrative fees;
5. User fees;
6. Move-in or move-out fees;
7. Claims for damage to property caused by an owner or a person an owner is responsible for;
8. Interest charged on debts other than outstanding strata fees and special levies;
9. Legal fees;
10. NSF charges; and
11. Other chargebacks.

A strata corporation can commence an action in court for the amounts in the same methods as a Certificate of Lien, in addition to the CRT. A $\frac{3}{4}$ vote resolution is not required to commence proceedings under the CRT.

For each non-lienable amount, a strata corporation must have the authority under the bylaws or SPA to charge is to the account of the strata lot owner and the must endure they comply with notice provisions under s 135 of the SPA. The strata corporation must also have a valid and enforceable bylaw or rule to create the debt, such as a “user fee” for the use of common property and common assets that is objectively foreseeable, as was the case in [*Strata Plan LMS 3883 v De Vuyst*](#), 2011 BCSC 1252.

D. Certificate of Payment

When a strata lot is being transferred, a Certificate of Payment must be filed at the Land Title Office (SPA, s 256) and must be provided by the strata corporation within one week of the request of the purchaser if not money is owing to the strata corporation or if money is owing but certain arrangements have been made to pay or to dispute the amount owing (s 115(1)). The strata corporation can charge a fee no greater than \$15 for the Certificate of Payment (s 115(3)).

A strata corporation can refuse to provide the Certificate of Payment until all of the outstanding arrears are paid or satisfactory arrangements for payments have been made. Often, the owner will pay to negotiate a settlement with the strata corporation. If court proceedings have commenced to resolve any disputed fines or costs, the owner can pay the strata corporation “in trust” until a dispute is resolved, requiring the strata corporation to then provide a Certificate of Payment (s 115(1)(b)(i)). If no legal proceedings have started, a strata lot owner disputing fines or costs of remedying a bylaw contravention has no option other than payment.

E. Foreclosure Proceedings

A mortgagee can commence foreclosure proceedings against a strata lot owner that owes money to the strata lot and to the mortgagee on title. If a Certificate of Lien is registered by the strata corporation to a strata lot, the strata corporation gets named as a respondent in the mortgagee’s foreclosure proceedings. The money owing under the Strata corporation’s Certificate of Lien has priority over the mortgage (SPA, s 116).

It used to be the case that a strata corporation was required to give the mortgagee a Certificate of Payment when a foreclosed strata lot was sold. However, if there was money owed to the strata over and above the amount owed under a Certificate of Lien, strata corporations would refuse to provide a Certificate of Payment. As a result, the Land Title Office would refuse to register the transfer of the strata lot without a Certificate of Payment. [*Peoples Trust Co. v Meadowlark Estates Ltd.*](#), 2005 BCSC 51 resolved this dilemma by deciding that a change of ownership arising from a foreclosure proceeding does not trigger the requirement under the PSA to file a Certificate of Payment. This means that if a Certificate of Lien is not filed by the strata corporation at the time of the sale, they lost their opportunity to claim for any money owed to it.

F. Principles of Allocation of Payments

If there is no bylaw dealing with allocation of payments from owners, the strata corporation will apply the payment as directed by the owner.

Many strata corporations have adopted bylaws stating that payments will be allocated to fines first. This is allowed, per [*Chorney v Strata Plan VIS 770*](#), 2011 BCSC 1811, as long as the bylaw does not prevent an owner from contesting or refusing to pay fines while continuing to pay strata fees. A bylaw that allocates payments cannot override an owner's express or implied direction to apply payments to strata fees and special levies.

X. STRATA CORPORATION BYLAWS AND RULES

A. Overview of Bylaws and Rules

Bylaws and rules govern the everyday life of a strata community, which often often comes as a surprise to new occupants of strata lots who are not used to this type of regulation. S 164 of the SPA allows an owner or tenant to have a court review what the owner or tenant considers to be a significantly unfair enforcement of a bylaw. The unfairness, the courts have decided, must be significant enough to warrant court intervention if they are going to take action. Strata councils must enforce bylaws to create a predictable living environment, but “enforcement vigour must be tempered with prudence and good faith” ([*Abdoh v Strata Plan KAS 2003*](#), 2013 BCSC 817 at para. 36)

B. What Are Bylaws and Rules?

1. Bylaws and Governance

A strata corporation must have bylaws (s 119(1) of the SPA) and the bylaws may provide for the control, management, maintenance, use and enjoyment of the strata lots, common property, and common assets of the strata corporation and for the administration of the strata corporation (119(2)).

2. Differences Between Bylaws and Rules

Bylaws govern strata lots, common property (including limited common property) and common assets. Rules only govern common property and common assets. Bylaws take precedence and govern if inconsistent with a rule (125(5)). Neither bylaws or rules are enforceable to the extent that they contravene the SPA, the SPR, the *Human Rights Code*, R.S.B.C. 1996, c. 210, or any other enactment or law.

Strata corporations must have bylaws, but they do not need to have rules. Bylaws can be amended by a passage of a $\frac{3}{4}$ resolution of the owners (s 128(1)) and have no effect until they are filed in the Land Title Office. Rules are created by the strata council, subject to majority ratification of the owners (s 125(6)) and take effect immediately and continue once ratified.

3. Schedule of Standard Bylaws

Section 120(1) of the SPA provides that “the bylaws of the strata corporation are the Standard Bylaws except to the extent that different bylaws are filed in the Land Title Office”. Owner developers may file bylaws that different from the standard bylaws.

Standard bylaws comprise seven divisions and an aggregate of 30 bylaws. The divisions are:

1. Duties of Owners, Tenants, Occupants and Visitors;
2. Powers and Duties of Strata Corporation;
3. Council;
4. Enforcement of Bylaws and Rules;
5. Annual and Special General Meetings;
6. Voluntary Dispute Resolution; and
7. Marketing Activities by Owner Developer

4. Creation and Amendment of Bylaws

Bylaws are amended by a $\frac{3}{4}$ vote of the owners where the resolution requiring a vote must be passed at an annual general meeting or special general meeting, and the proposed wording amending the bylaw must be included in the notice of such meeting.

The strata corporation can also make rules, which are usually made by the presiding strata council under s 26 of the SPA. The rules must then be ratified by a majority vote of the owners at the next annual general meeting or special general meeting (s 125(6)), and are effective immediately until it is repealed, replaced, or altered by the council (s 125(7)).

5. Registration of Bylaws

In order to be enforceable, a bylaw amendment had to be filed in the Land Title Office within 60 days of being passed. Until filing, the amendment has no effect. There is nothing in the SPA that speaks to the registration of rules. However, they must be in a written document and capable of being photocopied.

6. Repeal of Bylaws

A repeal of a bylaw is a form of amendment of a bylaw (s 126). A Standard Bylaw can be revealed (s 120(1)) by the owner developer or the strata corporation. A Standard Bylaw can be repealed by the Legislature, as well.

7. Prohibited and Unenforceable Bylaws

Any bylaw that contravenes the SPA, the SPR, the *Human Rights Code*, or any other enactment or law is unenforceable (s 121(1) and 141 of the SPA). Mote restrictions include:

- Bylaws cannot destroy or modify an easement under s 69 of the SPA.
- Bylaws cannot prohibit or restrict the right of an owner to freely sell, lease, mortgage, or otherwise dispose of the strata lot or an interest in the strata lot.
- Bylaws cannot prohibit or restrict short-term accommodations.

Case law has also provided that:

- Bylaws that attempt to provide the strata corporation with authority over an area they do not own are unenforceable ([*East Barriere Resort Ltd. v Strata Plan KAS 1819*](#), 2016 BCSC 1609).
- Bylaws that charge a “move-in fee” for a strata corporation where there is no use or wear of an elevator or other common property related to moving is unenforceable ([*Strata Plan LMS 3883 v De Vuyst*](#), 2011 BCSC 1252).

8. Bare Land Strata Bylaws

a) Exclusions from the Schedule of Standard Bylaws

Bare land strata developments involve different types of issues than regular strata plans, so many other bylaws might not apply to them. For example, Standard Bylaw 5 explicitly excludes bare land strata developments. Meanwhile, Standard Bylaw 8(d) refers to common walls in a sense of a conventional strata development, which do not exist in a bare land strata development.

Many bare land strata corporations will exclude bylaws that are not necessarily excluded by the SPR.

9. Interpretation of Bylaws and Rules

In [*Semmler v The Owners, Strata Plan NES3039*](#), 2018 BCSC 2064, the court ruled that strata bylaws must be interpreted similarly to statutory interpretation. See [*Strata Plan LMS 2333 v 1016711 B.C. Ltd.*](#), 2022 BCCRT 1352 for an application of this principle, where the tribunal decided it must interpret the plain and ordinary meaning of the words in an individual bylaw within the context of the entire bylaws.

C. Why Have Bylaws and Rules?

1. Compulsion

The strata corporation must have bylaws (SPA, s 119(1)).

2. Predictability

One of the advantages of bylaws is that owners can understand the standards with which they must comply, and that those rules are going to be enforced. *Metropolitan Toronto Condominium Corp. No 776 v Gifford* (1989), 6 R.P.R. (2d) 217 (Ont. Dist. Ct.) addressed this by saying in para 224 that “people will only move into the building if they are prepared to live by the rules of the community which they are joining. If they are not, they are perfectly free to join another community whose rules and regulations may be more in keeping with their particular individual needs, wishes, or preferences”.

3. Governance

Bylaws and rules are intended to govern those who live in a strata community. The strata lot owners can amend the bylaws and rules to reflect any uniqueness of the community. The strata council enforces the bylaws, basically governing the owners.

Bylaws may sometimes be “cousins” to provisions in the SPA, meaning they relate to similar issues but have some differences in their wording. Case law has determined that in this case, both the bylaw and the SPA should be read together, if possible, and if not possible, the SPA cannot be changed and will prevail.

D. Bylaw Enforcement

1. Who Enforces Bylaws?

In July 2016, the CRT joined the courts as the bodies that can determine whether bylaws were contravened, enforceable, or even valid. CRT rulings are like court injunctions – they can decide whether a party must do something, not do something, and/or pay money.

a) Enforcement by Strata Manager or Strata Council

S 26 of the SPA provides that the council must exercise the powers and perform the duties of the strata corporation, including the enforcement of bylaws and rules.

Standard Bylaw 20(4) states that a strata council may not delegate its powers to determine whether a person has contravened a bylaw or rule, whether a person should be fined, the amount of the fine, or whether a person should be denied access to a recreational facility.

b) Enforcement by Strata Corporation as Landlord

A residential strata lot landlord is entitled to give valid notice to a tenant under the *Residential Tenancy Act*, S.B.C. 2002, c. 78 if the tenant has repeatedly contravened or continues to contravene a reasonable and significant bylaw or rule (SPA, s 137). Section 138 of the SPA provides that a repeated or continuing contravention of a reasonable and significant bylaw or rule by a tenant of a residential strata lot that seriously interferes with another person’s use and enjoyment of a strata lot, the common property, or the common assets is an event that allows the strata corporation to act as a landlord and give a tenant notice under s. 47 of the *Residential Tenancy Act*.

c) Enforcement by Strata Council

The court in [*Abdoh v Strata Plan KAS 2003*](#), 2014 BCCA 270 found that a strata council has the discretion to choose not to enforce a bylaw, although this discretion is heavily limited by its standard of care from section 31 of the *SPA*.

This discretion to decide whether to enforce a bylaw is limited where the strata owners have a reasonable expectation that the bylaw that will be consistently enforced ([*Strata Plan LMS 3259 v Sze Holding Inc.*](#), 2016 BCSC 32). The CRT has also began awarding owners damages where the strata council had failed to fairly apply or enforce its bylaws, like in [*LeTexier v Strata Plan LMS 284*](#), 2019 BCCRT 940.

d) *Appoint Administrator*

An administrator is an individual who essentially acts as the strata council. If the strata council is not discharging its obligations to enforce bylaws and rules, and the court is of the opinion that it is in the best interests of the strata corporation to appoint an administrator, the court may do so under sections 164 and 174.

e) *Court Enforcement*

If the strata corporation is not enforcing bylaws and rules, they could be sued (*SPA*, s 163). The court can also regulate the conduct of the strata corporation's future affairs (s 164) and order a strata council to enforce bylaws and rules (s 166).

f) *Referral to Arbitrator*

A dispute may be referred to arbitration if it concerns interpretation or application of bylaws and rules, the use or enjoyment of a strata lot, or money owing with respect to fines for contravention of bylaws and rules (s 177(3)). An arbitrator can make whatever decision they consider just, having regard to bylaws and rules (s 185).

2. Enforced Against Whom?

Owners and tenants may be fined, should they contravene a bylaw or a rule. This includes a contravention by a guest of an owner or tenant, or an occupant if the strata lot is not rented by the owner to a tenant or a rented strata lot is not sublet by a tenant to a subtenant (s 130). The landlord, if they pay some or all of the fines or costs levied against their tenant, can recover their payments from the tenant.

Owners can also be fined for their tenant's transgressions if the owner permits that transgression like in [*Strata Plan BCS 3202 v Taheri*](#), 2021 BCCRT 38 when the tenant used the rented suites for Airbnb short-term rental stays in violation of the strata bylaws.

3. Enforcement Measures

A strata corporation may enforce its bylaws by imposing fines (*SPA*, s 130), taking direct action to remedy a contravention of its bylaws or rules (*SPA*, s 133(1)), or deny access to a recreational facility (*SPA*, s 134). Fines are subject to maximum amounts (*SPA*, s 132), and the strata corporation may additionally require the person who is fined to pay the reasonable costs of remedying their contravention (*SPA*, s 133(2)). A strata council's discretion in enforcing bylaws must be reasonable and fair.

a) *Fines*

Under s 130 of the *SPA*, fines can be levied against the strata lot owners or tenants, with respect to their personal conduct or conduct of their guests or occupants of their strata lots.

Standard Bylaw 23 states that the maximum a strata lot owner or tenant can be fined is \$50 for each bylaw contravention and \$10 for each rule contravention. However, a strata corporation can set out in its bylaws a different maximum amount it may fine an owner or tenant for a contravention for a bylaw or rule (s 132(1)).

Standard Bylaw 24 states that if an activity that constitutes a contravention of a bylaw or rule continues, without interruption, for longer than seven days, a fine may be imposed every seven days. Intermittent but consistent issues like noise complaints are not a continuing contravention. A strata corporation can set out in its bylaws the frequency at which fines may be imposed for a continuing contravention of a bylaw or rule (s 132(2)(b)).

Both the maximum fine and maximum frequency of imposition of fines must not exceed the maximums set out in the *SPR* or the bylaws (*SPA*, s 132(3)). The courts have also been reluctant to award the total fines levied if the aggregate total fines are substantial, like in [Kok v Strata Plan LMS 463](#), 1999 CanLII 6382 (BCSC), when the court said: “The imposition of fines does not serve to correct, remedy, or cure violations of the Bylaws but, rather, their purpose is to discourage violations of the Bylaws.

b) Doing Work to a Strata Lot, Common Property, or Common Assets

In remedying a contravention of a bylaw or rule, a strata corporation can do work to a strata lot, common property, or common assets, or remove objects from common property or common assets (*SPA*, s 133).

It is recommended that before work is done to a strata lot or limited common property designated for the exclusive use of one owner, the strata corporation obtain an injunction. Injunctions can include terms that if an owner refuses to do work to a strata lot, then the strata corporation can do it and charge the cost of such work back to the owner.

c) Injunctions

S 133 states that the strata corporation may do what is reasonably necessary to remedy a contravention of its bylaws and rules. This includes an injunction. For example, injunctions have been granted against owners from commencing further appeal court actions against the strata corporation ([Bea v Strata Plan LMS 2138](#), 2010 BCCA 463), and against owners to do things that have led to them constantly and continually contravening bylaws.

d) Recovery of Legal Costs

Generally, the requirement for an offending person fined under s 130 to pay reasonable costs of remedying the contravention does not include legal costs, as it includes, at most, tariff costs. However, the court in *Strata Plan NW 1260 v Neronovich* (31 October 2001), Vancouver L012803 (B.C.S.C.) determined there are some significant circumstances and serious contraventions sufficient to warrant actual costs incurred, including legal costs, to be recovered.

e) Denial of Access to Recreational Facility

Under section 134 of the *SPA*, the strata corporation may, for a reasonable length of time, deny a strata lot owner, tenant, occupant, or visitor access to a recreation facility that is common property or a common asset. Usage of this measure is limited to transgressions of bylaws or rules that relate to use of that facility.

f) Eviction

Under sections 137 and 138 of the *SPA*, tenants who repeatedly or prolongedly contravenes a “reasonable and significant” bylaw or rule may be evicted, pursuant to section 47 of the [Residential Tenancy Act, SBC 2002, c 78](#). There is no case law outlining the difference between a significant bylaw and an insignificant bylaw, and one would expect such a determination to be one based in each case on its facts. Either the landlord or the strata corporation may carry out the eviction.

4. Enforcement procedure

Section 135(1) of the *SPA* prevents a strata corporation from immediately fining, ordering payment of the costs of remedying, or denying access to a recreational facility upon becoming aware of a possible contravention. The strata corporation must first satisfy the following:

1. Receive a complaint about the contravention;
2. Disclose the owner or tenant the particulars of the complaint in writing;
3. Give that person a reasonable opportunity to answer the complaint, including holding a hearing if requested by that person;
4. In the case of a contravention by a tenant: give notice of the complaint to their landlord.

If the strata corporation does not strictly follow section 135, any resulting enforcement actions are invalid: see [Terry v The Owners, Strata Plan NW 309, 2016 BCCA 449](#).

a) Due Diligence

The strata council has its obligations and duty of care reflected in s 31 of the *SPA*. Part of this is to collect as much data as it can when making a determination. If a strata council decides a bylaw or rule has been contravened, then enforcement procedures set out in sections 129 and 138 commence. Complainants alleging the strata council has wrongly decided there is no rule or bylaw contravention, the complainant has remedies as reflected in ss. 163 and 189 of the *SPA*.

b) Particulars of Contravention

S 135(1)(e) provides that an owner or tenant must be given the particulars of a complaint. There is no definition of “particulars”, but in [Terry v Strata Plan NW 309, 2016 BCCA 449](#) at para 28, the court held that the owner or tenant must give particulars “sufficient to call to the attention of the owner or tenant the contravention at issue.”

c) Hearings

The CRT in [Eastman v Strata Plan PGS 217, 2019 BCCRT 655](#) found that the “hearing” should be defined as “an opportunity to be heard in person at a council meeting.” If the complaint is against a strata council member, the member must not participate in the hearing decision (*SPA*, s 136).

A strata council does not need to grant a hearing in every possible circumstance. In [Hales v Strata Plan NW 2924, 2018 BCCRT 92](#) held that the strata council was justified in denying an owner a hearing due to the following facts:

1. The owner has not been fined, nor has he been penalized;
2. The owner has made previous requests and was granted a hearing;
3. The owner acted abusively at the August 2015 hearing and the council could expect the same conduct at the four requested hearings.

4. The owner wished to discuss alleged contraventions of the strata and reparations to the owner due to the alleged contravention; and
5. The reasons for the requests were with respect to the governance of the strata and would be more properly addressed at a meeting of the owners, or by majority direction of the owners.

E. Miscellaneous Issues on Bylaws and Rules

1. Retroactivity

Bylaws do not typically create exemptions based on retroactivity except for the main examples in section 123(1) and (2) which address retroactivity with respect to pet and age requirements. The issue of retroactivity is largely up to the courts, like in [*Strata Plan NW 243 v Hansen*](#), 1996 CanLII 2957 (BC SC) when a bylaw prohibiting hot tubs was passed subsequent of the placement of a hot tub, and it would be unreasonable to force Hansen to remove the hot tub.

F. Acceptable Bylaws

Some provisions in the SPA permit strata corporations to influence their governance through bylaws not included in the Standard Bylaws.

1. Strata Council

Section 28(2) of the SPA permits a strata corporation to allow a class of persons, other than those referred to in s 28(1), to be strata council members. This does not permit a strata corporation to create a bylaw reserving positions on a strata council for owners of a section or type of strata lot.

Section 28(3) permits a strata corporation by bylaw to prohibit a person from standing for strata council or continuing as a strata council member with respect to a strata lot if the strata corporation is entitled to register a lien against that strata lot under s. 116(1).

2. Voting and Quorum

Section 53(2) permits a strata corporation by bylaw to prohibit a vote being exercised for a strata lot, except on matters requiring a unanimous resolution, if the strata corporation is entitled to register a lien against that strata lot under s. 116(1). That strata lot's vote must not be considered for the purposes of determining a quorum (s. 53(3)).

Section 48(2) provides that a quorum for an AGM or SGM is eligible voters holding 1/3 of the strata corporation's votes, present in person or by proxy unless there are fewer than four strata lots or four owners (in which case it is eligible voters holding 2/3 of the strata corporation's votes present in person or by proxy).

Section 48(3) provides that in the case of a lack of quorum within 1/2 hour from the time appointed for a general meeting, then the meeting is adjourned one week. If 1/2 hour passes without a quorum at the meeting a week later, then those present constitute a quorum. Holding two meetings is expensive, so many strata corporations pass a bylaw that calls for those present after 1/2 hour passes in the first meeting to constitute a quorum.

3. Financial Considerations

Section 98(2) prohibits expenditures from the operating fund in excess of the lesser of \$2,000 or five per cent of the annual operating fund budget, unless a bylaw states otherwise. A large strata corporation may wish to pass a bylaw increasing the limit, if the budget is substantial.

Section 107(1) permits the strata corporation by bylaw to establish a schedule of strata fees that sets out a rate of interest, not to exceed the rate set out in the SPR, to be paid if the owner is late paying strata fees and special levies.

4. Commencing Action in Small Claims Court

Section 171(2) provides that before a strata corporation sues under s 171 for money owing including a fine, the suit must be authorized by a resolution passed by a $\frac{3}{4}$ vote at an annual general meeting or special general meeting.

5. Maximum Fines

The Standard Bylaws provide that a strata corporation may fine a maximum of \$50 for contravention of a bylaw and \$10 for contravention of a rule. Section 132 of the SPA permits the strata corporation by bylaw to provide maximum fines in excess of the amounts noted in the Standard Bylaws, to a maximum set out in the SPR. Section 7.1(1)(a) of the SPR notes the maximum fines to be set out in bylaws are (with specified exceptions) \$200 for contravention of a bylaw and \$50 for contravention of a rule. Section 7.1(1)(c) provides that the maximum fine that a strata corporation may set out in bylaws for each contravention of a bylaw that prohibits or limits use of all or part of a residential strata lot for remuneration as vacation, travel, or temporary accommodation is \$1,000.

The maximum frequency that a bylaw can set out for the imposition of a fine for a continuing contravention of a bylaw or rule is every seven days (s. 7.1(2)(a)). However, in the case of contravention of a bylaw that prohibits or limits use of all or part of a residential strata lot for remuneration as vacation, travel, or temporary accommodation, the frequency may be daily under s. 7.1(2)(b).

6. Insurance

Section 149(4)(b) provides that property insurance obligations must include major perils, as set out in the SPR, and any other perils specified in the bylaws of a strata corporation. “Major perils” as defined in s. 9.1(2) of the SPR does not include earthquakes. It is recommended that a strata corporation pass a bylaw requiring it to obtain insurance against earthquakes.

7. Limitation of Liability

A strata corporation may pass a bylaw limiting the strata corporation’s liability to owners on property loss claims. This was confirmed by the CRT in [*Guemas v Strata Plan NW 2382*](#), 2021 BCCRT 655.

G. Rules

1. Mechanics

As the strata council exercises the powers and performs the duties of the strata corporation (*SPA*, s 26), the strata council may make rules governing the use, safety, and condition of the common property and common assets that do not contravene the *SPA*, the *SPR*, the *Human Rights Code*, or any other enactment or law.

A rule made by a strata council is valid only until the first general meeting (annual or special) after the rule is made. At that general meeting, the rule must be passed by a majority vote of the strata lot owners, or it will cease to have effect (s. 125(6)). Once the rule is so ratified, it is effective until it is repealed, replaced, or altered, without need for further ratification (s. 125(7)).

XI. RENTALS AND SHORT-TERM ACCOMMODATION OF RESIDENTIAL STRATA LOTS

A. Introduction to Residential Strata Lot Rentals and Use for Short-Term Accommodation

Restricting the rental of any strata lot is prohibited under s 141 of the SPA. As a result, a bylaw that restricts the rental of a strata lot is not enforceable. Effective November 24, 2022, a strata corporation also may not prohibit or otherwise restrict the rental of a residential strata lot, but may, by bylaw, limit the use of residential strata lots.

B. No Restriction on Rentals

1. Bylaws that Limit Disposition of Strata Lots

Section 121(1)(c) of the SPA provides that a bylaw is not enforceable to the extent that it prohibits or restricts the right of a strata lot owner to freely sell, lease, mortgage, or otherwise dispose of a strata lot or an interest in a strata lot. There are no exceptions related to rentals.

A strata corporation may also not adopt bylaws that require a strata lot owner to seek the corporation's approval of prospective tenants or establish screening criteria for tenants.

2. Bylaws Requiring the Approval of Rentals of Tenants

Section 141 of the SPA provides that a strata corporation must not, among other things, require the approval of tenants. Even if a strata corporation is not requiring the approval of specific tenants, there is no justification for a bylaw requiring strata council approval of strata lot rentals, as a bylaw limiting the number of rentals is not enforceable.

In [*Skipsey v Strata Plan 1538*](#), 2020 BCCRT 247, the revised wording of a bylaw up for contention at the CRT read as follows:

“Rentals will be considered by the strata council, on a case-by-case basis. Any approved rental will have a maximum period. Rental management to be approved by the council. Additional strata charges may be charged for rental units. No owner shall lease or rent a strata lot without the written permission of the strata council or a motion at a strata council meeting.”

This bylaw was found to be unenforceable.

C. Use of Strata Lots for Short-Term Accommodation

While a bylaw cannot restrict the rental of a strata lot, a strata corporation may, by bylaw, restrict the use of a strata lot by prohibiting licensing the use of all or part of a strata lot for short-term accommodation purposes. The question becomes what the difference is between a strata lot rental and a licence.

In [*Strata Plan VR 2213 v Duncan & Owen*](#), 2010 BCPC 123, the court held that the accommodation in question was akin to hotel-type accommodation, and this type of accommodation was subject to a licensing agreement and could be restricted by a strata corporation. Further, in [*Strata Plan VR 812 v Yu*](#), 2017 BCCRT 82, the CRT held that a strata lot owner using their strata lot as an Airbnb unit was in contravention of a strata corporation's bylaw prohibiting the use of a strata lot except as a “private dwelling home” and another of the strata corporation's bylaw prohibiting the use of a strata lot for short-term accommodation.

A strata corporation may also be able to rely on [*Nanaimo \(Regional District\) v Saccomani*](#), 2018 BCSC 752 as authority that hotel-type accommodation is not a “residential use”, so even absent a bylaw, would be contrary to the intended use of the strata lot if a strata plan shows, expressly or by necessary implication, that a strata lot or common property is intended for a residential purpose.

D. Age Restrictions and Rentals

A strata corporation may adopt a bylaw that requires one or more persons residing in a strata lot to have reached a specified age that is not less than 55 years (ss. 121(2)(c) and 123.1). This does not apply to someone if they were residing in the strata lot when the bylaw was passed, and is not required to vacate the strata lot if they do not meet the age requirement.

E. Tenants

1. Definition of Tenant

A “tenant” is defined in s. 1(1) of the SPA as a person who rents all or part of a strata lot and includes a subtenant. A roommate falls within the definition of “tenant” under the SPA.

A “tenant” should not be confused with an “occupant”. Section 1(1) defines an “occupant” as a person, other than an owner or a tenant, who occupies a strata lot. Therefore, an “occupant” may be a spouse, child, or friend of an owner or tenant.

2. Creating a Tenancy

In s. 1 of the *Residential Tenancy Act*, S.B.C. 2002, c. 78 (the “RTA”), “tenancy” means a tenant’s right to possession of a rental unit under a tenancy agreement. A “tenancy agreement” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit and use of common areas and services and facilities and includes a licence to occupy a rental unit.

Based on the decision in [*Strata Plan VR 2213 v Duncan & Owen*](#), 2010 BCPC 123, a bylaw prohibiting the use of all or part of a strata lot for short-term accommodation will not be effective to prevent rental of a strata lot if the parties’ relationship is determined on consideration of all relevant circumstances to create a tenancy.

3. Notice of Tenant’s Responsibilities

Before a landlord rents all or part of a residential strata lot, the landlord must give the tenant a copy of the current bylaws and rules and a Notice of Tenant’s Responsibilities (Form K of the SPR) (s. 146(1)(a) and (b)). Within two weeks of renting all or part of a residential strata lot, the landlord must give the strata corporation the Notice of Tenant’s Responsibilities, executed by the tenant (s. 146(2)).

4. Assignment of Landlord’s Duties and Powers

An owner of a strata lot, as landlord, may assign to a tenant some or all of the powers and duties of the strata lot owner that arise under the SPA or by virtue of bylaws and rules (s. 147(1)). The assignment is not effective until the landlord gives the strata corporation written notice stating the name of the tenant, the nature of the powers and duties assigned, and the time period during which the assignment is effective. There is no prescribed form for this purpose (s. 147(2)).

5. The Long-term Residential Lease

Under s. 148, an assignment of a landlord’s powers and duties is automatic for a long-term residential lease. A “long-term lease” is a lease of three years or more (s. 148(1)). A

residential strata lot under a long-term lease is a deemed assignment of the landlord's powers and duties, but the tenant must give the strata corporation written notice of the assignment before it is effective (s. 148(3)). There is no prescribed form for this purpose.

The strata corporation must give a copy of the notice received from the tenant to the landlord and to the strata lot owner if the owner is not the landlord (s. 148(4)); for example, in the case of subletting.

There are some powers and duties that the owner may not assign, such as liability for fines or the costs incurred by the strata corporation to remedy a tenant's contravention of bylaws or rules. Similarly, the tenant with an automatic assignment under s. 148 may not exercise the powers or duties of an owner in a few specified instances that deal with disposition of an interest in land by the strata corporation, unless the owner consents (s. 148(6)).

6. Election to Strata Council

A residential or commercial tenant may be elected to strata council (s. 28), provided that the landlord has assigned, in writing, the landlord's specific right to be on the strata council (s. 147). The decision in [*Jay v Strata Plan NW 3353*](#), 2018 BCSC 780 provides that there must be a tenancy agreement between the landlord and tenant to appoint the tenant as a representative to be elected to the strata council.

7. Authority to Receive Documents and Records

A tenant or former tenant who has or who had the benefit of an assignment from the landlord is entitled to all the same information that the SPA makes available to a strata lot owner. A list of records and documents that a strata corporation must prepare and retain can be found in section 35 of the SPA.

A tenant or former tenant may also request a copy of the rules and bylaws or to inspect the rules and bylaws. This must be provided within one week of the request. For former tenants, these documents can only be relating to the period of time during which the former tenant was a tenant (s 36(1.1)).

8. General Meetings

Annual or special general meetings require two weeks' written notice. The notice must go to a tenant if the tenant has an assignment of the landlord's rights and the strata corporation has received notice of the assignment (s. 45(1)(c)). A tenant with an assignment from a landlord of the landlord's right to vote may vote at a general meeting, provided that the strata corporation has received notice of the assignment (s. 45(1)(c)).

Tenants may also attend general meetings with or without eligibility to vote under Standard Bylaw 26, but must leave the meeting if they are ineligible to vote and those present, by majority vote, request the tenant to do so.

9. Right to Be Heard

A tenant may request, in writing, a hearing of strata council and attend a council meeting for that purpose (s. 34.1).

10. Short Term Use of Common Property

Section 76 of the SPA authorizes the strata corporation to give a tenant permission to use exclusively or have special privileges in connection with common assets or common property. The permission may be for up to one year initially and have conditions attached to it. Strata council may revoke the permission on reasonable notice or renew it for a fixed duration and/or on conditions.

11. Right to Benefit of Insurance

According to s. 155, a tenant is another named insured on the strata corporation's insurance policy. Therefore, where a tenant occupies a strata lot and suffers damage as a result of a loss, the tenant is entitled to claim on the strata corporation's insurance in circumstances where the owner of the strata lot could do so, despite not being an owner in the strata corporation.

F. Legal Proceedings on Tenancy Disputes

1. Taking Legal Action

A tenant may sue a strata corporation by application to the Supreme Court to seek a remedy or seek to prevent a significantly unfair action or decision of the strata corporation in relation to the tenant (s. 164(1)).

The *CRT Act* also permits a tenant to initiate a tribunal proceeding against a strata corporation as well as a former tenant if it is regarding a matter that occurred when the person was a tenant, per [*Gill v Strata Plan EPS 4403*](#), 2020 BCCRT 228.

2. Appointing an Administrator

A tenant, as a person with an interest in a strata lot, may apply to the Supreme Court for the appointment of an administrator to exercise the powers and perform the duties of the strata corporation (s. 174(1)).

3. Arbitration

Both the tenant and a strata corporation can refer a dispute between each other to arbitration under s 177 of the SPA.

G. Powers of the Strata Corporation

1. Collecting Money Owed by a Tenant

If a tenant owes money to the strata corporation, the strata corporation must give the tenant two weeks' written notice demanding payment and indicating that action may be taken if payment is not made within two weeks (s. 112(1)). If the money is not paid, the strata corporation can pursue a lawsuit, arbitration, or initiate a proceeding against the tenant.

2. Evicting a Tenant

A repeated or continuing contravention by a tenant of a reasonable and significant bylaw or rule allows the landlord to give the tenant notice terminating the tenancy agreement under s. 47(1) of the *RTA* (s. 137). The strata corporation can stand in the place of the landlord if the tenant repeatedly contravenes a significant and reasonable bylaw or rule that seriously interferes with another person's use and enjoyment of a strata lot or the common property.

3. Fining a Tenant

A strata corporation may fine a tenant if a bylaw or rule is contravened by the tenant; a person visiting the tenant or a person admitted to the premises by the tenant for social, business, or family reasons or any other reasons; or an occupant, if the strata lot is not sublet by the tenant to a subtenant (s. 130(2)). The strata corporation may also require a tenant to pay reasonable costs of remedying a bylaw or rule contravention under s. 133(2). If the strata corporation fines a tenant or requires the tenant to pay such costs, it may collect the fine or costs from the tenant (s. 131(1)). However, the strata corporation may not collect

from both the landlord and the tenant in excess of the amount owing (s. 131(1)). The strata corporation must strictly follow section 135 when enforcing a bylaw against a tenant. It is not permissible to enforce a tenant's bylaw contraventions against the tenant's landlord. 2022 BCCRT 205.

If a strata corporation fines a tenant, it may collect the fines from the owner.

4. Denying Access to Facilities

A strata corporation may, for a reasonable length of time, deny a tenant the use of a recreational facility that is common property or a common asset if the tenant has contravened a bylaw or rule relating to the recreational facility (s. 134).

5. Enforcing a Short-term Accommodation Bylaw

A strata corporation can set out in its bylaws a maximum fine of \$1,000 per day for the contravention of a bylaw that prohibits or limits use of all or part of a residential strata lot for remuneration as vacation, travel, or temporary accommodation.

XII. PRIVACY

A. Overview of Privacy Obligations

There are two main aspects to privacy within a strata context, one concerning “the right to be left alone” and the other concerning the collection, use, disclosure, and protection of personal information.

1. The “Right to be Left Alone”

[*Heckert v 5470 Investments Ltd.*](#), 2008 BCSC 1298 defines “privacy” at para. 72 as: “the right to be let alone, the right of a person to be free from unwarranted publicity ... the right of an individual (or corporation) to withhold himself and his property from public scrutiny, if he so chooses.”

Further, the [*Privacy Act*](#), R.S.B.C. 1996, c. 373 provides for a statutory cause of action for violation of privacy in s. 1(1), as follows:

1 (1) It is a tort, actionable without proof of damage, for a person, willfully and without a claim of right, to violate the privacy of another.

Only the BC Supreme Court can hear claims about Privacy Act breaches.

2. Personal Information

“Personal information” is any information, whether fact or opinion, regarding an identifiable individual. The only exception is business contact information. “Business contact information” is a person’s name and business address, business telephone, business fax number, and business email address. Under the [*Personal Information Protection Act*](#), S.B.C 2003, c. 63 (the “*PIPA*”), the most recent enactment of the *Privacy Act*, business information is not personal information and can be disclosed freely.

A strata corporation is required by the SPA to collect certain personal information, including names and addresses of strata lot owners, tenants, and occupants. In addition, strata corporations frequently collect other personal information, such as banking information, letters of complaint, and emergency contact information.

PIPA also holds strata corporations responsible for any personal information it collects and any personal information collected on its behalf. Three matters of importance when assessing compliance with *PIPA* are:

1. A strata corporation must obtain proper consent before collecting, using, or disclosing personal information from or about an individual. The strata lot owner, tenant, or occupant is entitled to know what is being done with their personal information.
2. A strata corporation should have proper system in place to ensure that all the personal information in its possession is protected.
3. A strata corporation must be prepared to respond to request from individuals for access to their own personal information. An organization under *PIPA* must provide upon request:
 - (a) The personal information of that individual that the strata corporation has in its possession;
 - (b) The ways in which the personal information is being used; and
 - (c) The names of individuals and organizations to which the personal information has been disclosed.

XIII. INSURANCE

A. Division of Insurance

Section 149 of the *SPA* outlines the property insurance that the strata corporation is required to obtain and maintain. The strata corporation's duty to insure does not cover the same areas as the strata corporation's duty to repair and maintain common property.

The strata corporation is required to insure:

- Common property;
- Common assets;
- Buildings shown on the strata plan (which, in a conventional strata lot, covers the entirety of all strata lots);
- In the case of a conventional strata plan: fixtures on each strata lot that were installed by the owner developer as part of the original construction of the strata lot.

Note that for the purpose of section 149, "fixtures" does not take its common law definition, and instead takes a specific definition from section 9.1(1) of the *SPR*. This definition of "fixtures" refers to elements attached to the building and necessarily includes floor and wall coverings, and electrical and plumbing fixtures. However, for any other item, if it can be removed without causing damage to the building, it will not count as an original construction fixture that the strata corporation must insure.

The strata corporation's property insurance must protect against "major perils" (*SPA*, s 149(4)(b)). The *SPR* defines "major perils" in section 9.1(2) as any of the following:

1. Fire or explosions;
2. Smoke;
3. Lightning, windstorms, or hail;
4. Water escape;
5. Strikes, riots or civil commotion;
6. Impact by aircraft or vehicles;
7. Vandalism or malicious acts.

Under section 161(1) of the *SPA*, owners may obtain insurance for:

- Loss or damage to their strata lot in excess to that covered by the strata corporation's insurance;
- Fixtures in their strata lot that are not covered by the strata corporation's insurance;
- Improvements to fixtures referred to in section 149(1)(d);
- Loss of rental value by the owner's strata lot in excess to that covered by the strata corporation's insurance;
- Property damage and bodily injury occurring on either their strata lot or common property.

B. Insurance Deductibles and Co-Insurance Clauses

1. Insurance Deductibles

Most strata corporation insurance policies have deductibles that apply to the various coverages under the policy. The minimum deductibles are typically determined by market conditions and can be increased by a strata corporation, but if determined to be excessive, it can be argued that the strata corporation has failed its duty to obtain insurance, per [*Stevens v Simcoe Condominium Corp. No. 60*](#), 1998 CanLII 18852 (ON SC).

The payments of insurance deductibles is set out in s 158(1) and (2) of the *SPA*:

- (1) Subject to the SPR, the payments of an insurance deductible in respect of a claim on the strata corporation's insurance is a common expense to be contributed to by means of strata fees calculated in accordance with s 99(2) or s 100(1).
- (2) Subsection (1) does not limit the capacity of the strata corporation to sue an owner in order to recover the deductible portion of an insurance claim if the owner is responsible for the loss or damage that gave rise to the claim.

XIV. THE DUTY TO REPAIR AND MAINTAIN

A. The Duty to Repair and Maintain

As a general principle, the SPA provides that a strata corporation is responsible for the repair and maintenance of the common property, while the strata lot owner is responsible for their own lot. This principle is subject to more detailed provisions of the SPA, the SPR, and bylaws adopted by a strata corporation.

1. Developing a Plan for Repair and Maintenance

a) Information from the Owner Developer under the Strata Property Act

The SPA recognizes the owner developer as an initial source of information with respect to repairs and maintenance of strata developments. The owner developer is required by s. 20(2)(a) to deliver the following documents at the first annual general meeting:

1. all plans that were required to obtain a building permit and any amendments to the building permit plans that were filed with the issuers of the building permit;
2. any document in the owner developer's possession that indicates the "as built" location of pipes, wires, ducts, cables, chutes, and other facilities for the passage or provision of services, if the owner developer has reason to believe that these facilities are not located in the places shown on the building permit plans or any amendments to the building permit plans;
3. the names and addresses of all contractors, subcontractors, and persons who supplied labour or materials to the project as required by the SPR; and
4. warranties, manuals, schematic drawings, operating instructions, service guides, manufacturers' documentation, and other similar records regarding the construction, installation, operation, maintenance, repair, and servicing of any common property or common assets.

b) Provision of Manual and Warranty under the Homeowner Protection Act

In addition, Part 8 of the *Homeowner Protection Act*, S.B.C. 1998, c. 31 requires anyone offering a new home for sale to provide a home warranty with certain minimum coverage, including:

1. defects in materials and labour for a period of at least two years after the date on which the warranty begins;
2. defects in the building envelope, including defects resulting in water penetration, for a period of at least five years after the date on which the warranty begins; and
3. structural defects for a period of at least 10 years after the date on which the warranty begins.

2. Depreciation Reports

To assist a strata corporation in undertaking its repair and maintenance obligations, s. 94 of the SPA requires a strata corporation to obtain a depreciation report to estimate the service life and anticipated maintenance, repair, and replacement costs for specified components of the strata corporation. This helps the strata corporation to better plan for the future and fund its contingency reserve fund accordingly. The strata corporation can only temporarily exempt itself from the requirement to obtain a depreciation report if, within the one-year

period prior to the date on which the report is required to be obtained, the owners adopt a $\frac{3}{4}$ vote resolution at an annual or special general meeting (SPA, s. 94(3)).

The requirements for a depreciation report are set out in section 94 of the SPA, including:

1. The report must be obtained from a “qualified person”, a term defined in s. 6.2(6) of the SPR as “any person who has the knowledge and expertise to understand the individual components, scope and complexity of the strata corporation’s common property, common assets and those parts of a strata lot or limited common property, or both, that the strata corporation is responsible to maintain or repair under the SPA, the strata corporation’s bylaws or an agreement with an owner and to prepare a depreciation report that complies with [s. 6.2(1) to (4) of the SPR]” (s. 94(2)).
2. A strata corporation must obtain a depreciation report in accordance with the following timelines (SPA, s. 94(2), SPR, s. 6.2(7)):
 - a. when a strata corporation was established on or before December 14, 2011, the first depreciation report must have been obtained no later than December 14, 2013; and
 - b. when a strata corporation has already obtained at least one depreciation report, the next depreciation report must be obtained no later than three years after the date of the last report.
3. A depreciation report is required to include all of the following (SPR, s. 6.2(1)):
 - a. a physical inventory and evaluation that complies with s. 6.2(2);
 - b. a summary of repairs and maintenance work for common expenses respecting the items listed in s. 6.2(2)(b) that usually occur less often than once a year or do not usually occur;
 - c. a financial forecasting section that complies with s. 6.2(3);
 - d. the name of the person from whom the depreciation report was obtained and a description of that person’s qualifications, errors and omissions insurance coverage, if any, and relationship with the strata corporation; and
 - e. any other information or analysis that the strata corporation or the person providing the depreciation report considers appropriate.

B. Repair and Maintenance of Common Property and Common Assets

1. Strata Property and Standard Bylaws

a) Essential and Fundamental Obligation of the Strata Corporation

The B.C. Supreme Court has recognized the duty to repair and maintain common property as an essential and fundamental obligation of the strata corporation ([*Royal Bank of Canada v Holden*](#), 1996 CanLII 3440 (BCSC)). These repairs may be purely aesthetic in nature ([*Kornylo v Strata Plan VR 2628*](#), 2019 BCCRT 1215). This duty applies to common assets as well ([*Strata Plan KAS 2827 v Couchman*](#), 2018 BCCRT 186).

A strata corporation may delegate to a strata lot owner its responsibility for maintenance and repair of limited common property that the owner has a right to use (s 72(2)(a)) as well as common property other than limited common property subject to the SPR (s 72(2)(b)). However, no regulations have been adopted permitting a corporation to do the latter, so the strata corporation cannot purport to make an owner responsible for the repair and maintenance of common property through the bylaws.

This makes the distinction between limited common property and common property important.

However, the adjudicator in [*Tagle v Strata Plan EPS 2604*](#), 2022 BCCRT 161 there was nothing in the SPA that prevented the strata corporation from permitting owners to assume responsibility for common property maintenance and repair, and it will have acted reasonably in relying on those repairs ([*Wu v 238998 Investments Ltd.*](#), 2021 BCCRT 205).

The obligation on a strata corporation to repair and maintain will be assessed on a standard of reasonableness, that is, to do all that can reasonably be done. The court in [*Strata Plan LMS 3539 v Ng*](#), 2016 BCSC 2462 held that a strata corporation can be liable in the tort of private nuisance to a strata lot owner for losses arising out of the failure of a common property pipe resulting in significant damage to the owner's strata lot.

b) Bare Land Strata Plans

In a bare land strata plan, the boundaries of a strata lot are determined by reference to survey markers, and not the midpoints of walls, ceilings, and floors, as is typically the case in a conventional strata plan. The same "reasonableness" standard of repair in the context of a "conventional" strata plan applies to bare land strata plans, per the CRT's application in [*Stubbert v Strata Plan KAS 2750*](#), 2021 BCCRT 564.

However, as the exterior walls, roofs, windows, and doors of the building on a bare land strata lot form part of the strata lot, the strata corporation is not responsible for repair and maintenance of a strata lot's exterior unless that obligation is assumed by operation of a properly approved bylaw.

C. Repair and Maintenance of Limited Common Property

The SPA allows a strata corporation to designate areas of common property as limited common property, intended for the exclusive use of one or more strata lots.

1. Strata Property Act and Standard Bylaws

In general, the SPA contemplates that the strata corporation will be responsible for the repair and maintenance of limited common property. However, unlike in the case of common property, a strata corporation is permitted by bylaw to make an owner responsible for the repair and maintenance of limited common property that an owner has the right to use (s. 72(2)(a)).

A strata corporation is responsible for the repair and maintenance of limited common property, again to a reasonableness standard, that occurs less frequently than once per year, as well as for the repair and maintenance of the following areas of limited common property no matter how often the repair or maintenance ordinarily occurs:

1. the structure of the building;
2. the exterior of the building;
3. chimneys, stairs, balconies, and other things attached to the exterior of the building;
4. doors, windows, and skylights on the exterior of the building or that front on the common property; and
5. fences, railings, and other similar structures that enclose patios, balconies, or fences.

2. Repair and Maintenance Expenses

The funds necessary for the repair and maintenance of the common property and common assets form part of the “common expenses” of a strata corporation (s. 1(1)). See section 7 (Strata Corporation Finances) for a detailed breakdown of how strata corporation can raise funds to fulfill their duties, including repair and maintenance expenses, through the:

1. Operating Fund;
2. Contingency Reserve Fund; and/or
3. Special Levies

a) Sections and Types

The general principle that all owners must contribute to the costs and repair and maintenance in accordance with unit entitlement has exceptions where sections or types of strata lots have been created by the operation of bylaws.

Sections

Section 191 permits the creation of sections to represent the different interests of:

1. residential strata lot owners and non-residential strata lot owners;
2. non-residential strata lot owners, if they use their strata lots for significantly different purposes (for example, strata lots used as retail stores, as distinguished from strata lots used for parking stalls); and
3. residential strata lot owners where there are different types of strata lots.

Although the SPA provides no guidance on what constitute “significantly different purposes” for non-residential strata lots, s. 11.1 of the SPR sets out the following “different types” of residential strata lots recognized by the SPA for the purpose of creating sections:

1. apartment-style strata lots;
2. townhouse-style strata lots; and
3. detached houses.

Part 11 of the SPA does not contain an express requirement that a section repair and maintain any particular property. Section 194(2)(a) does provide that the section has the same powers and duties of the strata corporation to establish its own operating fund and contingency reserve fund for common expenses of the section, so it may be inferred that a section has the obligation to repair and maintain common property designated for all strata lots within the section.

Types

Unlike a strata corporation and section, the recognition of “types” within a strata corporation does not give rise to separate legal entities. Instead, the adoption of a bylaw that acknowledges the existence of different types of strata lots empowers a strata corporation (or a section) to allocate operating fund expenses relating solely to a particular type of strata lot to only the strata lots of that type.

In [*Fraser v Strata Plan VR 1411*](#), 2006 BCSC 1316, the court rejected an attempt to create “types” for the sole purpose of allocating responsibility for undertaking and paying for the cost of repair and maintenance of common property. In addition, s. 11.2(3) of the SPR provides that contributions to the contingency reserve fund and to a special levy, even if raised to pay for the repair and maintenance of types within a section, must be levied against all strata lots in the section, regardless of type.

b) Windows, Doors, and Skylights

The SPA's definition of "common property" does not expressly deal with windows, doors, and skylights, making it difficult to decide how to repair and maintain these. This decision is very fact-dependant based on where a window, door, or skylight is installed, and it will be argued in different cases whether the window, door, and skylight is completely within a strata lot, on the boundary between the strata lot or completely within the common property.

Standard Bylaw 8(c)(ii)(D) of the SPA makes the strata corporation responsible for all aspects of the maintenance of windows, doors, and skylights that are on the exterior of a building or that face common property. Even if the exterior-facing windows, doors, and skylights form part of the strata lot, the strata corporation would be responsible for the repair and maintenance of these areas ([*Strata Plan NWS 254 v Hall*](#), 2016 BCSC 2363).

c) Alterations to Common Property or Common Assets Made by Strata Lot Owners

Standard Bylaw 6 requires a strata lot owner to obtain the permission of the strata corporation before undertaking any alteration to common property, including limited common property, or to common assets. A strata corporation is permitted to require an owner to assume in writing responsibility for any expenses relating to the alteration.

In addition, to further enforce the obligations being assumed with respect to the alteration, consideration should be given to amending Standard Bylaw 5(2)) to provide that owners are responsible for undertaking and paying for the cost of maintaining and repairing any alterations made to common property by the owner or a prior owner of the strata lot.

XV. STRATA DISPUTE RESOLUTION

A. Basics of Strata Dispute Resolution

This section discusses a variety of issues related generally to dispute resolution involving strata corporations. It combines discussion of issues specific to strata corporations under the SPA and general practice issues arising in the context of the affairs and dealings of strata corporations.

1. Methods of Dispute Resolution

Four methods currently available for resolving disputes are court litigation, arbitration, mediation, and the Civil Resolution Tribunal (CRT).

a) Court Litigation

Litigation in court involves resolving a dispute using public institutions with independent decision-makers who have considerable legal knowledge, but may or may not know anything about the area the dispute involves.

b) Arbitration

The SPA provides rules for arbitration in the strata context. Arbitration gives parties more control than court litigation, as they can choose arbitrators that have knowledge about strata law or a particular subject that is of question in a dispute. Arbitration decisions are also kept privately unlike court and CRT litigation, unless appealed to a court after the arbitrator makes its decision.

c) Mediation

Mediation is a voluntary process in which an independent person is chosen by the parties to help them reach an agreement. Mediators do not have the authority to make binding decisions, and can occur at any time before, during, or after court proceedings.

d) Civil Resolution Tribunal

Until July 2016, the BC Supreme Court and BC Provincial Court resolved strata disputes. After that date, the CRT has assumed jurisdiction over many strata property matters once within jurisdiction of the courts.

e) Voluntary Dispute Resolution Bylaw

Section 124 of the SPA permits strata corporations to create dispute resolution bylaws. Standard Bylaw 29 creates such a bylaw, and provides as follows:

- (1) A dispute among owners, tenants, the strata corporation or any combination of them may be referred to a dispute resolution committee by a party to the dispute if
 - a) all the parties to the dispute consent, and
 - b) the dispute involves the SPA, the SPR, the bylaws or the rules.
- (2) A dispute resolution committee consists of
 - a) one owner or tenant of the strata corporation nominated by each of the disputing parties and one owner or tenant chosen to chair the committee by the persons nominated by the disputing parties, or
 - b) any number of persons consented to, or chosen by a method that is consented to, by all the disputing parties.
- (3) The dispute resolution committee must attempt to help the disputing parties to voluntarily end the dispute.

Strata corporations do not have to use this Standard Bylaw and can wish to create their own voluntary dispute resolution bylaw.

2. Remedies Available at Court

The courts have a wide range of remedies available when dealing with disputes under the SPA, in addition to any that may be available at common law. The remedies available will depend on what section of the SPA is used and what sections of the SPA are alleged to have been breached by the offending party.

a) Declarations

A declaration that a strata lot owner or the strata corporation has breached the SPA or a bylaw is a common starting point. It sets the foundation for the rest of the orders sought.

b) Order for Payment or Reimbursement of Money

If a strata lot owner had paid for something that the court finds should have been paid for something that the court finds should have been paid for by the strata corporation, or vice versa, it may be possible to obtain an order requiring reimbursement, like in [*Blackmore v Strata Plan VR 274*](#), 2004 BCSC 1121.

c) Injunction-like Orders

Injunctions requiring that a strata lot owner or strata corporation stop contravening a section of the SPA or fulfill a duty under the SPA are common.

d) Damages

Damages are available to a strata lot owner in a negligence of contract claim. The CRT has also awarded damages for significant unfairness for breaching the SPA ([*Lozjanin v Strata Plan BCS 3577*](#), 2019 BCCRT 481), although the Supreme Court has not ruled on whether those types of damages are allowed.

e) Costs

The fact that strata lot owners still must live together, work together, and/or get along with each other after decisions are made, makes it necessary for judges to deal with costs carefully. Paras. 32 and 33 of [*Lum v Strata Plan VR 519*](#), 2001 BCSC 493 demonstrate costs should be awarded while remaining sensitive to what is in the best long-term interests of the parties in a claim.

3. Remedies Available at the CRT

Section 123 of the *Civil Resolution Tribunal Act*, S.B.C. 2012, c. 25 (the “CRT Act”) permits the CRT to make an order requiring a party to do or refrain from doing something, or requiring a party to pay money.

B. Section 164 – Significantly Unfair Acts

If strata lot owners are unhappy with their treatment by a strata corporation, they can use section 164 of the SPA to remedy “significantly unfair” actions or decisions, which provides as follows:

- (4) On application of an owner or tenant, the Supreme Court may make any interim or final order it considers necessary to prevent or remedy a significantly unfair
 - (b) Action or threatened action by, or decision of, the strata corporation, including the council, in relation to the owner or tenant, or

- (c) Exercise of voting rights by a person who holds 50% or more of the votes, including proxies, at an annual or special general meeting.

The CRT has the same authority to make orders about significantly unfair acts and decisions under the *CRT Act*.

1. Legal Test for Significant Unfairness

The legal test for significant unfairness is the same between the courts and the Civil Resolution Tribunal ([*Dolnik v The Owners, Strata Plan LMS 1350*, 2023 BCSC 113](#)).

The basic test for whether an action is significantly unfair is whether it is “burdensome, harsh, wrongful, lacking in probity or fair dealing, or done in bad faith, or conduct that is unfairly prejudicial in that it is unjust or inequitable” ([*Kunzler v The Owners, Strata Plan EPS 1433*, 2021 BCCA 173](#)). The owner’s reasonable expectations are a relevant factor, but they are not determinative.

The following questions can be used to assess whether the owner’s reasonable expectations were breached ([*Dollan v The Owners, Strata Plan BCS 1589*, 2012 BCCA 44](#)):

1. Examined objectively, does the evidence support the asserted reasonable expectations of the petitioner?
2. Does the evidence establish that the reasonable expectation of the petitioner was violated by action that was significantly unfair?

See [*Collins v The Owners, Strata Plan NES 2865*, 2023 BCCRT 577](#) for an application of this test for significant fairness.

2. Proper Parties in Significant Unfairness Claims

Section 164 allows a strata lot owner or tenant to apply for an order regarding a significantly unfair action by the strata corporation, including the strata council, or a person who holds 50 per cent or more of the votes at a general meeting. Strata owners should not include as defendants individual strata council members unless those members have “personally benefitted to the detriment of the Strata Corporation as a result of a breach of their duties and obligations owed to the Strata Corporation” ([*Azura Management \(Kelowna\) Corp. v Strata Plan KAS 2428*](#), 2009 BCSC 506 at para. 9).

3. Remedies Available under Section 164

Section 164 gives the court broad discretion to fix a problem caused by a strata corporation that has acted in a significantly unfair fashion. This could include compensation in the form of damages, moulding the remedy to suit the problem, making an order to regulate the strata corporation’s future conduct, and more.

4. Bylaws to Collect Legal Fees

Many strata corporations have bylaws that allow them to collect not just costs but legal fees back from owners involved in disputes with the strata corporation. In [*Hammerberg & Co. v Margitay*](#), 2001 BCSC 1312, an example of this bylaw was held to be valid, but it could be argued that if costs have already been awarded by the court against a strata lot owner, it might be significantly unfair for the strata corporation to recover legal fees from that same owner.

5. Scope of Judge/Tribunal’s Power to Remedy Significant Unfairness

The court or CRT have a broad range of powers to prevent or remedy a significantly unfair action of the strata corporation, arising from s 164 of the SPA and s 48.1 of the *CRT Act*. The CRT’s remedial power includes awarding general damages.

It is important to note that just because a strata corporation is following the SPA, they may still be acting significantly unfair and breaching section 164. A variety of factors should be considered in every scenario to determine whether a strata corporation could be acting significantly unfair under section 164, including:

- The knowledge of the strata lot owner at different times;
- The involvement of the owner in creating the situation;
- How the strata council has dealt with other owners in similar situations; and
- The involvement of individual strata council members or other in their role as owners in creating the situation.

6. Cases Decided under Section 164

A few examples of cases decided under s 164 include:

Name of Case	Issue	Significantly Unfair?
<i>Reid v Strata Plan LMS 2503</i> , 2001 BCSC 1578	Strata council resolution giving the owners permission to place planters, etc. on common property patio not significantly unfair to owner whose windows looked over area	No
<i>Als v Strata Corp. NW 1067</i> , 2002 BCSC 134	Strata council refused permission to rent strata lot; not significantly unfair	No
<i>Strata Plan VR 1767 v Steven Estate Ltd.</i> , 2002 BCSC 381	Assessment of contribution to costs of building envelope repair based on erroneous unit entitlement registered at the land titles office in the strata plan is significantly unfair	Yes
<i>McGowan v Strata Plan NW 1018</i> , 2002 BCSC 936	Bylaw allowing balcony enclosure; different treatment of some owners justified by safety issues	No

C. Responsibility for Judgements

All strata lot owners are responsible for their proportionate share of the total judgement based on their unit entitlement. When a judgement is granted against a strata corporation, it can be registered against the title to all strata lots. When a judgement is in favour of a strata lot owner, that owner is not responsible for legal costs payable by the strata corporation or for a proportionate share of the judgement (ss. 169 and 171(6)).

XVI. RECURSE TO THE COURTS

A. Matters That the Court May Determine at First Instance

1. Inherent Jurisdiction

The BC Supreme Court may exercise its inherent jurisdiction as a superior court to determine strata property claims and disputes. The CRT also has the authority to handle strata disputes between owners of strata lots and corporations for a variety of matters.

2. Legislative Authority

Administrative tribunals have no inherent or equitable jurisdiction and can exercise only the powers conferred on them by their legislation.

a) Civil Resolution Tribunal Jurisdiction

The CRT shares non-exclusive jurisdiction over strata property claims with the courts. The courts can dismiss a claim and order it to be instead resolved by the CRT if it is under their jurisdiction.

S. 121(1) of the SPA outlines the CRT's jurisdiction to resolve certain claims, including the following:

- (d) the interpretation or application of the Strata Property Act or a regulation, bylaw or rule under that Act;
- (e) the common property or common assets of a strata corporation;
- (f) the use or enjoyment of a strata lot;
- (g) money owing, including money owing as a fine, under the *Strata Property Act* or a regulation, bylaw or rule under that Act;
- (h) an action or threatened action by a strata corporation, including the council, in relation to an owner or tenant;
- (i) a decision of a strata corporation, including the council, in relation to an owner or tenant;
- (j) the exercise of voting rights by a person who holds 50% or more of the votes, including proxies, at an annual or special general meeting.

On the other hand, the following types of claims are excluded by s 122 of the *CRT Act* and must be determined by the BC Supreme Court:

- (b) s. 33 [*accountability*];
- (c) s. 52 [*unanimous votes*];
- (d) s. 58 [*court appointed voter*];
- (e) s. 89 [*removal of claim of lien after purchase from owner developer*];
- (f) s. 90 [*removal of liens and other charges*];
- (g) s. 117 [*forced sale of owner's strata lot to collect money owing*];
- (h) s. 160 [*court orders respecting rebuilding damaged property*];
- (i) s. 173(2) [*court order when special levy resolution receives more than 1/2 but less than 3/4 of votes*];
- (j) s. 174 [*appointment of administrator for strata corporation*];
- (k) s. 208 [*orders respecting requests from leasehold landlords*];
- (l) s. 209 [*leasehold landlord's remedies on leasehold tenant's default*];
- (m) the following provisions of Part 13 [*Phased Strata Plans*]:
 - (i) s. 226(1)(c) and (d) [*release of security for common facilities*];
 - (ii) s. 232 [*amendment of declaration to extend time for election*];
 - (iii) s. 233 [*other amendments respecting Phased Strata Plan Declaration*];

- (iv) s. 235 [orders if owner developer elects not to proceed with next phase];
- (v) s. 236 [order to compel completion of a phase];
- (n) s. 246 [order for amendment of Schedule of Unit Entitlement];
- (o) the following provisions of Part 16 [Cancellation of Strata Plan and Winding Up of Strata Corporation]:
 - (ii) s. 272 [vote to cancel strata plan];
 - (iii) s. 273.1 [confirmation by court];
 - (iv) s. 278.1 [confirmation by court];
 - (v) s. 279 [order vesting authority in liquidator];
 - (vi) s. 284 [application for court order to wind up strata corporation].

b) Court Order that Civil Resolution Tribunal Not Resolve Claim

The Supreme Court may order the CRT not resolve a strata property claim if the CRT lacks jurisdiction to resolve the claim (s 16.2(1)(a)) or if it is not in the “interests of justice and fairness” that the CRT resolves the claim (s 16.2(1)(b)).

c) Court Order that Court Not Resolve Claim

The CRT is deemed to have specialized expertise with respect to strata property claims within its jurisdiction, so the court must dismiss a proceeding if it is under the CRT’s jurisdiction, unless it is not in the “interests of justice and fairness” per s 16.2(1)(b).

3. Interests of Justice and Fairness

When considering whether the court resolution of the claim is in the interests of justice and fairness, the Supreme Court may consider the following under s 16.3 of the *CRT Act*:

- (a) whether an issue raised by the claim or dispute is of such importance that the claim or dispute would benefit from being adjudicated by that court to establish a precedent;
- (b) whether an issue raised by the claim or dispute relates to a constitutional question or the *Human Rights Code*;
- (c) whether an issue raised by the claim or dispute is sufficiently complex to benefit from being adjudicated by that court;
- (d) whether all of the parties to the claim or dispute agree that the claim or dispute should be adjudicated by the tribunal;
- (e) whether the claim or dispute should be heard together with a claim or dispute currently before that court;
- (f) whether the use of electronic communication tools in the adjudication process of the tribunal would be unfair to a party in a way that cannot be accommodated by the tribunal.

4. Civil Resolution Tribunal Refusal to Hear Claim

The CRT may also, under s 11(1) of the *CRT Act*, refuse to hear a claim that is otherwise within its jurisdiction.

B. Court Proceedings for Strata Property Matters

1. Applicable Levels of Court

Recourse to the courts (the Provincial Court, Supreme Court of British Columbia, or the Court of Appeal of British Columbia) is needed when the dispute is not within the jurisdiction of the CRT and neither of the parties has issued a notice to arbitrate or sought mediation.

The Supreme Court can hear any dispute that is not excluded from its jurisdiction by legislation, while the Provincial Court can only hear cases that the *Provincial Court Act*, R.S.B.C. 1996, c. 379 and other legislation may grant it. Appeals from the Provincial Court decisions are heard at the Supreme Court, while appeals from the Supreme Court are heard at the Court of Appeal.

2. Bylaw to Sue in Small Claims Court Without a $\frac{3}{4}$ Vote Resolution

A strata corporation may sue in either Provincial or Supreme Court for money owed to the strata corporation if the lawsuit is first approved by a $\frac{3}{4}$ vote at an annual or special general meeting (see s. 171(2)).

Section 171(4) provides, however, that a $\frac{3}{4}$ vote resolution is not required to commence a proceeding in Small Claims Court if the strata corporation has passed a bylaw by passing a $\frac{3}{4}$ vote resolution at either an annual or special general meeting dispensing with the need for authorization, and the terms and conditions of that bylaw are met.

3. Parties/Style of Cause/Standing

The proper name for a strata corporation is “The Owners, Strata Plan [number]” (SPA, s 2(1)(b)). Failure to name parties properly may result in default proceedings being set aside or a judgment being granted against a nonexistent party.

Generally, if relief is sought against someone asking the court to order someone to do something, that person should be named as a party to the claim.

Further, different sections of the SPA also permit different entities to bring a claim. A strata lot owner can bring a claim against the strata council where the council members is in breach of the ‘conflict of interest’ sections of s 32 of the SPA ([Wong v AA Property Management Ltd.](#), 2013 BCSC 1551).

4. Petition versus Notice of Civil Claim

Proceedings in Supreme Court can be started by a petition or notice of claim. Strata disputes must be brought to court by petition if the SPA permits “an application” to the Supreme Court, which is often the case for strata disputes. Proceedings commenced under petitions have unique rulings, like no automatic right to cross-examine on affidavits or to issue subpoena or to examine witnesses.

Claims brought by a notice of civil claim can take longer to resolve than one brought by petition. Evidence in a trial is normally given orally when brought by a notice of civil claim, whereas a petition is usually heard in Supreme Court chambers on the basis of affidavits instead of oral evidence.

5. Section 171 and 172 Approval and Funding of Litigation

Sections 171(2) and 172(1)(b) require a strata corporation to obtain a $\frac{3}{4}$ vote resolution authorizing litigation brought under these sections before starting the action.

Section 171 should be used when there is a “representative action”, as described in [Strata Plan LMS 1468 v Reunion Properties Inc.](#), 2002 BCSC 929. For example, this is the section under which a “leaky condo” action would be brought. In other words, even though there may be individual claims as well, if it can be said that “if one wins, they all win”, the claim falls under s 171.

a) Types of Actions That Require a $\frac{3}{4}$ Vote

The requirement for a $\frac{3}{4}$ vote makes it difficult for a strata corporation to pursue litigation, so the courts have held that sometimes, this approval is not required. In [*Strata Plan VR 1008 v Oldaker*](#), 2004 BCSC 63, the strata corporation did not need $\frac{3}{4}$ vote approval to bring a petition under s. 117 to sell a strata lot to enforce a lien. Essentially, when the SPA authorizes a strata corporation to bring a proceeding against an owner for a specific purpose, approval under s 171 is not required.

b) Ending an Action

A majority vote under s. 27 may be sufficient in some cases to authorize discontinuance of an action ([*Strata Plan LMS 1468 v Reunion Properties Inc.*](#), 2001 BCSC 788). However, if a claim seeks damages or payments of money to the strata corporation, s. 82 may require a $\frac{3}{4}$ vote to approve a settlement or discontinuance of a lawsuit.

c) Retroactivity of Approval

The requirement for approval under s. 171(2) or 172(1)(b) before starting litigation remains. However, in a situation of urgency such as an injunction to preserve the status quo in the face of a threatened action that cannot easily be undone, or because of the possible imminent expiry of a limitation period, a strata corporation can start an action or petition and then proceed to obtain the $\frac{3}{4}$ vote approval of the litigation retroactively.

6. Practice Issues in Strata Litigation

a) Litigation Privilege and Requests for Access to Records

Sections 35 and 36 of the SPA allow strata lot owners and tenants (including former owners and tenants) to obtain documents of the strata corporation, including legal opinions obtained by the strata corporation. However, attorney-client privilege is a fundamental principle of our legal system, so the court in [*Strata Plan VR 1120 v Mithcinson*](#), 2022 BCSC 2054 held that legal opinions obtained by a strata corporation and requested under s. 36 are only to be produced as follows:

1. opinions relating to litigation between the strata corporation and the requesting owner are not disclosable, as specifically provided by s. 169(1)(b) of the SPA;
2. opinions relating to disputes between the strata corporation and the requesting owner that did not result in litigation are not disclosable, as protected by solicitor-client privilege; and
3. opinions relating to contemplated or ongoing disputes between the strata corporation and other owners are not to be provided to the requesting owner until the litigation is fully resolved and all avenues of appeal fully exhausted, at which time the opinions may be provided to a requesting owner. Upon disclosure, the requesting owner is not to share the legal opinions received with any other person or organization.

b) Cross-Examination on Affidavit

There is no right to cross-examine a deponent on their affidavit, but it may be possible to obtain consent to do so from the parties or an order from the courts. The test for determining whether cross-examination is justified is, from [*Brown v Garrison*](#) 1967 CanLII 849 (BCCA):

In exercising its discretion, the court will consider whether there are material facts in issue, whether the cross-examination is relevant to an issue that may affect the outcome of the substantive application, or whether the cross-examination will serve a useful purpose in terms of eliciting evidence that would assist in determining the issue.

c) Evidence

Evidence and how to properly get it before the court is a common issue in strata dispute resolution. Often times, strata claims are about novel issues and what needs to be included as evidence continues to involve.

General rules of evidence still apply to strata disputes, and hearsay evidence should not be used in an affidavit.

d) Discovery Process

There are a number of different parties that can act as a strata corporation, including the strata lot owners, members of the strata council, agents hired by the strata corporation, or employees of the strata corporation. Issues can arise about who would be an appropriate representative for examinations of discovery. However, when a strata corporation is a plaintiff, every strata lot owner may be examined for discovery ([Strata Plan VR 368 v Marathon Realty Co.](#), 1982 CanLII 493 (BC CA)).

e) Relief Sought

It is very important to figure out what kind of relief to seek before filing a petition or notice of claim. A judge is usually reluctant to order remedies that are not asked for in some fashion in the petition or notice of claim.

f) Stay of Proceedings

To avoid inconsistent results when multiple actions are brought for interrelated issues involving a single strata corporation, a stay of some of the proceedings may be ordered. To determine if a stay is appropriate, the following issues should be considered ([Peh v Strata Plan LMS 3837](#), 2008 BCSC 291 at paras. 69 to 99):

1. Will a decision in one case substantially determine, or reduce the issues to be decided in, the other case or cases?
2. Is the stay sought for tactical reason?
3. What is the most “logical, efficient, and cost-saving” way to proceed?
4. Where is the balance of convenience?

C. “Tadeson” Orders

A Tadeson order is a common name for a court order under section 165 of the *SPA*, named after [Tadeson v Owners, Strata Plan NW 2644, 30 RPR \(3d\) 253 1999 CanLII 6999 \(BC SC\)](#) [*Tadeson*]. Under this section, an owner, tenant, mortgagee of a strata lot or other interested person may apply to the Supreme Court to order that a strata corporation do any of the following:

- a) Perform an act required by the *SPA*, *SPR*, bylaws, or rules;
- b) Stop violating the *SPA*, *SPR*, bylaws, or rules;
- c) Any other order necessary to give effect to the above.

A Tadeson order is often used for “leaky condo” situations, where a strata corporation fails to make necessary repairs under its responsibility.

In *Tadeson*, a bloc of strata lot owners repeatedly blocked resolutions to pay for repairs to defective walls and balconies that allowed water to enter the building. Finding a failure to discharge its duty to repair, the court allowed the petition to pay for repairs and ordered costs against the owners who opposed the petition.

D. Section 173 Applications

Section 173(1) of the *SPA* operates similarly to a section 165 Tadeson order, but the court order compels a strata lot owner, tenant, or other person to comply with or cease violations of the *SPA*, *SPR*, bylaws, or rules.

A strata corporation must first satisfy three conditions before it may apply to the BC Supreme Court for a section 173 order:

1. It proposes a resolution to approve a special levy to raise money for repairs to common property or common assets that are necessary to ensure safety or prevent significant loss or damage;
2. The resolution fails the required $\frac{3}{4}$ vote of the strata lot owners, but does receive more than half of the votes cast;
3. Not more than 90 days have passed since the resolution was voted upon.

The strata corporation has the burden of proving on a balance of probabilities that the repairs are required, although it is not necessary to prove that the repairs were required immediately: [*The Owners, Strata Plan VIS114 v John Doe*, 2015 BCSC 13](#).

An application under s. 173(2) is typically commenced by a petition, and all registered owners must be served with a copy of the court materials by “personal” service under the Supreme Court Civil Rules.

E. Judicial Review from the Civil Resolution Tribunal

1. The Nature of Judicial Review

Provincial superior courts have an inherent jurisdiction to review the decisions or actions of delegates, including administrative tribunals such as the CRT for strata disputes.

2. Time Limit for Review

There is a 60-day time limit for commencing a judicial review of a decision of the CRT from the date the decision is issued. However, under s. 57(2) of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 (“*ATA*”), the court may extend the time for filing the petition for judicial review if it is satisfied that there are serious grounds for relief, there is a reasonable explanation for the delay, and no substantial prejudice or hardship will result to a person affected by the delay.

3. Standard of Review

For strata cases decided by the CRT, the applicable standard of review pursuant to s. 56.7 of the *CRT Act* is “patent unreasonableness” by establishing the CRT as an “expert tribunal” with “specialized expertise in relation to questions of law and fact.

However, the rule of law requires a correctness standard of review for constitutional questions, general questions of law of central importance to the legal system as a whole, and questions related to the jurisdictional boundaries between two or more administrative bodies. Where the court does apply the correctness standard of review, they may substitute its own view for that of the CRT. For example, in [*Strata Plan VR 1120 v Mitchinson*](#), 2022 BCSC 2054, the court found that questions of solicitor-client privilege fall into the general category of questions of law, to the court applied the correctness standard and substituted its own opinion for that of the CRT.

F. Enforcement or Cancellation of Civil Resolution Tribunal (CRT)

1. Enforcing or Cancelling Orders of the CRT at Court

Sections 57 to 60 of the *CRT Act* provides means by which parties may enforce orders of the CRT in the Supreme Court of British Columbia or the Provincial Court of British Columbia.

An order of the CRT may be enforced by filing a validated copy of the “order giving effect to the final decision” in the Supreme Court of British Columbia (CRT Act, s 57). The following conditions must be met:

1. The final decision is an approved draft consent resolution order;
2. The time to appeal the decision has expired or leave to appeal has been denied.

If on appeal, the Supreme Court has varied the CRT decision, the varied decision can be enforced by filing both a validated copy of the CRT decision and the Supreme Court order.

If the CRT order is for financial compensation or the return of personal property and the value of the payment or property is less than the monetary limit from the [Small Claims Act, RSBC 1996, c 430](#), the order may instead be filed in the Provincial Court (CRT Act, s 58).

For a more complete discussion of enforcing decisions of the CRT, refer to Chapter 20: Small Claims and the CRT.

a) Contempt of Court

In extreme cases of non-compliance with a CRT order, it may be necessary to commence proceedings of contempt of court. Section 60 of the CRT Act provides that:

- (1) A person who fails or refuses to comply with an order of the tribunal is liable, on application to the Supreme Court, to be punished for contempt as if in breach of an order or judgement of the Supreme Court.
- (2) Subsection (1) does not limit the conduct for which the Supreme Court may make a finding of contempt in respect of a person’s conduct in relation to a tribunal proceeding.

In this scenario, the applicant must be prepared to demonstrate the elements of contempt beyond a reasonable doubt ([Strata Plan LMS 2768 v Jordison](#), 2013 BCSC 487 at para. 34). The elements are set out at para 19 of [Strata Plan NW 2395 v Nikkel](#), 2020 BCSC 282, citing [Carey v Laiken](#), 2015 SCC 17:

- (a) The order breached must be stated clearly and unequivocally concerning what should and should not be done: para. 33. If an order is unclear or is missing essential detail about where, when, or to whom it applies; if it incorporates overly broad language or if external circumstances obscured its meaning, the alleged contemnor may be excused;
- (b) The person must have actual knowledge of the order: para 34. It may be possible to infer knowledge in some circumstances or if the contemnor has been wilfully blind; and
- (c) The party alleged to be in breach must have done the act intentionally: para 35. Intent to interfere with the administration of justice is not an element of civil contempt and the lack of contumacy is not a defence: para. 47.

Punishments for contempt include fines and, as a last resort per [Strata Plan VR 812 v Yu](#), 2019 BCSC 693, the forced sale of an owner’s strata lot.

2. Authority to Enforce or Cancel an Order of the CRT

Section 171(2) of the SPA states that before the strata corporation sues as representative of all owners, the suit must be authorized by a 3/4 vote resolution. This does not apply to the Civil Resolution Tribunal. From sections 189.1 and 34.1 of the *SPA*, a strata corporation, owner, or tenant may request the CRT to resolve any dispute concerning a strata property claim within its jurisdiction, although requests by an owner or tenant must be preceded by

either a request for a council hearing or a CRT direction that the council hearing may be exempted.

The CRT can cancel an order under s. 37 of the *CRT Act*. A strata corporation must then file the cancelled order and not take any further steps to enforce the order.