

# **AN OVERVIEW OF STRATA LOT TYPES AND SECTIONS**

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## An Overview of Strata Lot Types and Sections

Strata corporations have become increasingly diverse over the years. Condominiums with both apartment and townhouse units have become common, as developers seek to offer buyers greater variety. Mixed residential and commercial or retail uses have also become commonplace, as city planners recognize the synergy between higher density living and the service sector of our economy.

Our condominium legislation has responded to these changes through the creation of strata lot types and sections. This paper examines how these units are regulated.

### I. Strata Lot Types

The overriding principle when allocating common expenses under the *Strata Property Act* is that all owners are “in it together”.<sup>1</sup> This is a marked change in philosophy from the *Condominium Act*, which remained in effect until July 1, 2000:<sup>2</sup>

Before the *Strata Property Act* ... came into force on July 1, 2000, the general scheme under the *Condominium Act* was that common expenses of a strata corporation were allocated to different "types" of strata lots. Under the [*Strata Property Act*], the general scheme is that common expenses are shared proportionately by all the owners, without reference to "types" of strata lots.

Equality among strata lots does not always make sense. Certain strata lots make significantly different demands on a condominium's resources, while others have unique features that must be maintained and repaired over the condominium's life.

Fairness may in some instances require that common expenses be shared unequally. This principle is recognized in Section 6(4) of the *Strata Property Regulation*:

(2) For the purposes of section 99 of the Act, but subject to a resolution under section 100 of the Act, if a contribution to the operating fund relates to and benefits only one type of strata lot, and that type is identified as a type of strata lot in the bylaws of the strata corporation, the contribution is shared only by owners of strata lots of that type, and each strata lot's share of that contribution is to be calculated in accordance with the following formula and not in accordance with the formula set out in section 99 (2) of the Act:

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<sup>1</sup> *Strata Plan LMS 1537 v. Alvarez*, 2003 BCSC 1085.

<sup>2</sup> *Coupal v. Strata Plan LMS 2503*, 2004 BCCA 552, para. 1.

$$\frac{\text{unit entitlement of strata lot}}{\text{total unit entitlement of all strata lots of the type to which the contribution relates}} \times \text{contribution to operating fund}$$

(3) Subject to a resolution under section 100 or 108 (2) (b) of the Act, if a strata lot's share of a contribution to the operating fund is calculated in accordance with subsection (1) or (2), each strata lot's share of the total contribution to the contingency reserve fund or a special levy is be calculated using the following formula:

$$\frac{\text{unit entitlement of strata lot}}{\text{total unit entitlement of all strata lots}} \times \text{total contribution to contingency reserve fund or special levy}$$

Contributions are therefore allocated by type under the *Strata Property Act* if:

1. the bylaws recognize different types of strata lots,
2. the contribution is to the operating fund,
3. the contribution relates to and benefits only one type of strata lot, and
4. a unanimous resolution has not been approved under section 100 or 108(2), providing for a different allocation.

Where common expenses are allocated by type, each strata lot pays its unit entitlement share of the total unit entitlement of all strata lots of that type.

When considering whether to apportion expenses by type, a strata corporation should therefore ask the following questions:

1. Do the bylaws recognize different types of strata lots?
2. Does the common expense involve a contribution to the operating fund?
3. Does the contribution relate to and benefit one type of strata lot only?

An affirmative answer to all three questions is required before the expense may be allocated to one type of strata lot only.

In addition, if the strata corporation was created before July 1, 2000, when the *Strata Property Act* replaced the *Condominium Act*, the issue of which enactment applies arises (the "transition" issue).

**A. Do the Bylaws Establish Different Types of Strata Lots?**

Section 6.4(2) allows expenses to be apportioned to one type of strata lot only if “that type is identified as a type of strata lot in the bylaws of the strata corporation.” A bylaw amendment must have been enacted that distinguishes between different strata lot types, and provides that the strata lots to which the expense is to be attributed comprise a distinct type.

This is a significant change from the *Condominium Act*, which allowed expenses to be allocated by type without any amendment to the bylaws. The standard bylaws in Part 5 of that Act prescribed a general rule applicable to all strata corporations regardless of their characteristics:

- (2) If a strata plan consists of more than one type of strata lot, the common expenses must be apportioned in the following manner:
  - (a) common expenses attributable to one or more type of strata lot must be allocated to that type of strata lot and must be borne by the owners of that type of strata lot in the proportion that the unit entitlement of that strata lot bears to the aggregate unit entitlement of all types of strata lots concerned;
  - (b) common expenses not attributable to a particular type or types of strata lot must be allocated to all strata lots and must be borne by the owners in proportion to the unit entitlement of their strata lots.

The *Strata Property Act* does not define what comprises a different type of strata lot. Section 191(1) does, however, establish which strata lots may constitute a different section within a strata corporation:

- 191(1) A strata corporation may have sections only for the purpose of representing the different interests of
  - (a) owners of residential strata lots and owners of nonresidential strata lots,
  - (b) owners of nonresidential strata lots, if they use their strata lots for significantly different purposes, or
  - (c) owners of different types of residential strata lots.
- (2) For the purposes of subsection (1) (c), strata lots are different types if they fall within the criteria set out in the regulations.

Section 11.1 of the *Strata Property Regulation* provides that separate sections may be created for the following types of residential strata lots:

- 11.1 For the purposes of section 191 (1) (c) of the Act, the following are the different types of residential strata lots:

- (a) apartment-style strata lots,
- (b) townhouse-style strata lots,
- (c) detached houses.

It is clear that apartments, townhouses and detached homes may constitute different types of residential strata lots. Because the other kinds of sections recognized in section 191(1) may also have different budgetary needs, it is likely that they too could constitute different types.

The following distinctions may therefore give rise to strata lot types:

1. *Different physical characteristics:* Apartments, townhouses<sup>3</sup> and detached homes may form different types. Different types may also be recognized within these categories where strata lots have features that are likely to require significantly different expenditures. Apartment strata lots with roof decks could therefore probably be recognized as a different type than lower apartment units without this amenity. It is also likely that nonresidential strata lots with different physical characteristics may be organized into different types.
2. *Different uses:* Different types may be established where:
  - a. there are residential and nonresidential strata lots, or
  - b. nonresidential strata lots are used for significantly different purposes (i.e. a restaurant and an office).

Differences between owners of similar units concerning how they should be repaired do not give rise to different types.<sup>4</sup>

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<sup>3</sup> Apartments have one or more common entries, while townhouses have individual access to the outdoors: *Strata Plan LMS 1537 v. Alvarez*, 2003 BCSC 1085, at para. 93.

<sup>4</sup> *Oakley v. Strata Plan VIS 1098*, 2003 BCSC 1700.

**B. Does the Common Expense Involve a Contribution to the Operating Fund?**

A careful reading of section 6.4(2) of the *Strata Property Regulation* reveals that only contributions to the operating fund may be allocated by type. Contributions to the contingency reserve or a special levy must be paid by all strata lots, regardless of type.<sup>5</sup>

Section 92 of the *Strata Property Act* defines the operating and contingency reserve funds as follows:

92. To meet its expenses the strata corporation must establish, and the owners must contribute, by means of strata fees, to
- (a) an operating fund for common expenses that usually occur either once a year or more often than once a year, and
  - (b) a contingency reserve fund for common expenses that usually occur less often than once a year or that do not usually occur.

It is therefore only expenses that usually occur once or more per year that may be allocated by type. Expenses that normally do not occur on an annual basis and are paid from the contingency reserve or by special levy must be allocated to all units.

In *Wilfert v. Ward* the Court concluded that a \$2.4 million building envelope remediation expense did not fall within the operating fund, and therefore could not be allocated by type.<sup>6</sup>

**C. Does the Contribution Relate to and Benefit One Type of Strata Lot Only?**

Common expenses cannot be allocated by type unless they benefit one type of strata lot only. Expenses which benefit both types (but to different degrees) must be paid by all units.

This principle was recognized in *Ernest & Twins Ventures (PP) Ltd. and No. 213 Cathedral Ventures Ltd. v. The Owners, Strata Plan LMS 3259*, 2004 BCCA 597, a recent decision of our Court of Appeal involving the allocation of expenses in a mall. The owner of strata lots in a “parking section” of the development sought a declaration that a budget requiring

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<sup>5</sup> In *Coupal v. Strata Plan LMS 2503*, 2004 BCCA 552, our Court of Appeal held that a special levy could not be allocated by type under the *Strata Property Act* unless a unanimous vote had been approved under sections 100 or 108, or separate sections had been created: para. 34.

<sup>6</sup> *Wilfert v. Ward*, 2004 BCSC 289, at para. 30.

it to pay its unit entitlement share of certain common expenses (landscaping, garbage removal, managerial, security, and financing) was illegal. It argued that where an expense benefits one type of strata lot disproportionately, a strata corporation must allocate according to the benefit derived by each type of strata lot from the expense.

The Court of Appeal dismissed this argument:

18. In my view, s. 6.4(2) of the Regulation provides only that where an item of operating expense relates to or benefits one type of strata lot exclusively, and that type is identified in the bylaws, the contribution for that item of expense is to be shared by the owners of that one type of strata lot alone; the section does not provide for any greater apportioning of expenses among types of strata lots. As worded, the section serves to burden the owners of one type of strata lot with an item of expense from which they derive the only benefit. It affords a limited exception to the equal sharing of operating expenses based on a *pro rata* allocation in accordance with unit entitlement, for which s. 99 of the Act provides.

Expenses may therefore be allocated by type if they benefit one type of strata lot alone. Expenses that benefit different types of strata lots disproportionately must be paid by all strata lots.

#### **D. Transition**

Prior to July 1, 2000, section 128(2) of the *Condominium Act* included a standard types bylaw that applied to all strata corporations unless it was amended or repealed:

- (2) If a strata plan consists of more than one type of strata lot, the common expenses must be apportioned in the following manner:
  - (a) common expenses attributable to one or more type of strata lot must be allocated to that type of strata lot and must be borne by the owners of that type of strata lot in the proportion that the unit entitlement of that strata lot bears to the aggregate unit entitlement of all types of strata lots concerned;
  - (b) common expenses not attributable to a particular type or types of strata lot must be allocated to all strata lots and must be borne by the owners in proportion to the unit entitlement of their strata lots.

One of the primary objectives of the *Strata Property Act* was to clarify the law and make it easier for Council members and owners to apply it on a day-to-day basis. It is fair to say that the provisions governing the transition of the two Acts fell short of this objective.

The *Strata Property Act* deals generally with transition, providing in section 293 that:

Except as otherwise provided by this Act and the regulations, this Act and the regulations apply to a strata plan deposited and a strata corporation created under the *Condominium Act*, R.S.B.C. 1996, c. 64 or any former Act.

**Section 17.11 of the *Strata Property Regulation* addresses the transition of the standard bylaws in the new Act:**

17.11(1) Except as provided in section 17.9 of this regulation, the Standard Bylaws do not apply to a strata corporation created under the *Condominium Act* until January 1, 2002, and on that date apply only to the extent set out in this section.

(2) Subject to subsections (3) to (5), a strata corporation bylaw existing under the *Condominium Act* immediately before the coming into force of this section, including a bylaw under Part 5 of the *Condominium Act* or under a former Act which was deemed, by section 26 (2) of the *Condominium Act* or a similar section of a former Act, to be a bylaw of the strata corporation, continues to have effect despite any provision of the Act or this regulation.

(3) On January 1, 2002,

(a) the Standard Bylaws are deemed to be the bylaws for all strata corporations created under the *Condominium Act*, except to the extent that conflicting bylaws are filed in the land title office, and

(b) any bylaws under Part 5 of the *Condominium Act* or under a former Act which were deemed, by section 26 (2) of the *Condominium Act* or a similar section of a former Act, to be bylaws of the strata corporation cease to have effect.

(4) Subject to subsection (5), if a strata corporation bylaw filed in the land title office conflicts with a Standard Bylaw, the filed bylaw prevails.

(5) On January 1, 2002, a strata corporation bylaw filed in the land title office ceases to have effect to the extent that it conflicts with a provision in Parts 1 to 17 of the Act or this regulation.

(6) Subsection (5) does not apply to a bylaw that was filed in the land title office before July 1, 2000 to the extent that the bylaw provides for the apportionment of contributions to a contingency reserve fund as a common expense according to type of strata lot, if that type of strata lot is a type identified in the bylaws of the corporation or a section.”

**Between July 1, 2000 (when the *Strata Property Act* replaced the *Condominium Act*) and December 31, 2001 (when the standard types bylaw of the old Act ceased to have effect), section 17.13 of the *Strata Property Regulation* prescribes that condominiums with different types of units must allocate common expenses as follows:**

17.13 (1) Subject to the bylaws of the strata corporation, if a strata corporation's budget, in effect on the coming into force of this section, apportions any common expenses to one or more type of strata lot in accordance with section 128 (2) of the *Condominium Act* or a similar bylaw, the strata corporation may continue to use the type of strata lot identified in the budget as a 'type of strata lot' for the purposes of sections 6.4 (2) and 11.2 (2) of this regulation.

(2) Subsection (1) is of no effect on or after January 1, 2002.

(3) Before January 1, 2002, a strata corporation may enact a bylaw that identifies the type of strata lot set out in the budget referred to in subsection (1) as a 'type of strata lot' for the purposes of sections 6.4 (2) and 11.2 (2).



(4) Despite section 128 (1) of the Act, a bylaw under subsection (3) may be approved by a resolution passed by a majority vote at an annual or special general meeting.

The new legislation therefore contemplates three distinct periods:

1. A “*Condominium Act Period*” prior to July 1, 2000: During this period the standard types bylaw in section 128(2) of the *Condominium Act* applies, unless it is altered or repealed by the strata corporation.
2. A “*Transition Period*” from July 1, 2000 to December 31, 2001: During this time, a strata corporation can continue to allocate expenses by type only if:
  - (a) its budget in effect on July 1, 2000 divided expenses by type, or
  - (b) a bylaw amendment filed in the land title office permits allocation of expenses by type.

A strata corporation wishing to apportion expenses by type after December 31, 2001 must expressly approve a types bylaw. During the Transition Period, the types bylaw may be approved by a 50% + 1 majority rather than the usual 75%.

3. A “*Strata Property Act Period*” after January 1, 2002: During this period, a strata corporation can allocate expenses by type only if it has filed a types bylaw in the Land Title Office. The types bylaw may be approved by a 50% + 1 majority during the Transition Period or by a 3/4 vote resolution thereafter. A filed types bylaw will be of no force and effect after January 1, 2002 to the extent that it conflicts with Parts 1 to 17 of the *Strata Property Act* or *Regulation*. A *Condominium Act* Period types bylaw filed prior to July 1, 2000 that allows contributions by type to the contingency reserve will continue to be effective, despite section 6.4(3) of the *Strata Property Regulation*.

## **II. Strata Lot Sections**

### **A. What is a Section?**

A section is, in essence, a mini strata corporation. The *Strata Property Act* gives sections the right to take substantial responsibility for matters that fall within its jurisdiction.<sup>7</sup>

A strata corporation may create sections to represent the interests of different owners in a mixed use strata plan. Sections might distinguish between residential and nonresidential strata lots. Residential sections may distinguish between types of strata lots (e.g., apartment, townhouse or detached houses). Similarly, nonresidential sections might distinguish between strata lots used for significantly different purposes (e.g., retail or warehouse).

Although the theme of the *Strata Property Act* is that we are “all in it together”, the Act recognizes that groups of owners may have different needs and objectives. The Act also recognizes that allowing each group of owners to govern itself in areas of specific interest to the group will help meet the overriding objectives of the Act.

### **B. How to Create Sections**

Sections can be created by the developer or by the strata corporation after the development is complete<sup>8</sup>. A strata corporation may create a section by amending the strata corporation bylaws at a general meeting. The resolution requires two separate votes: a 3/4 vote by the eligible voters within the proposed section, and a 3/4 vote by the eligible voters of the strata corporation.

Curiously, the Act does not provide for the dissolution of sections. The best course may be to follow the procedures for the formation of the section in reverse.

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<sup>7</sup> Part 11 of the *Strata Property Act*, Sections 190-198.

<sup>8</sup> Sections 192 and 193

### C. The Division of Powers

After the creation of a section, the strata corporation retains all its powers and duties in matters of common interest to all the owners<sup>9</sup>. With respect to matters relating solely to the section, however, the section is a corporation with the same powers and duties as the strata corporation. For example, each section may:

- a. establish its own operating fund and contingency reserve fund,
- b. prepare its own budgets,
- c. collect strata fees,
- d. impose special levies,
- e. sue or arbitrate in the name of the section,
- f. enter into contracts,
- g. acquire or dispose of land or other property, and
- h. amend and enforce bylaws and rules.

A couple of points to note:

1. *Contracts*: Despite having the power to contract on its own behalf, a section does not have the right to contract in the name of the strata corporation and a strata corporation is not liable for contracts made, or debts or legal costs incurred by a section.<sup>10</sup>
2. *Collections*: The Act does not provide that a section can file a Form G “Certificate of Lien” for the non payment fees and levies. When forming a section, the strata corporation should retain responsibility for the collection fees and levies for the section.<sup>11</sup>

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<sup>9</sup> Section 194

<sup>10</sup> Section 194(3)

<sup>11</sup> Section 194(2)(b)

**D. Expenses**

Expenses relating solely to the strata lots in a section are shared by the owners of the strata lots in the section on a unit entitlement basis, and the formula to calculate each strata lot's contribution to the operating fund and contingency reserve fund is calculated in the usual manner:<sup>12</sup>

$$\frac{\text{unit entitlement of strata lot}}{\text{total unit entitlement of strata lots in the section}} \times \text{total contribution}$$

**(1) Sharing Expenses for Limited Common Property and Types of Strata Lots**

Where the expenditure relates to shared operating expenditures for limited common property ("LCP"), the contribution to the operating fund is shared only by owners of the strata lots entitled to use the LCP. Section 11.2(1) of the *Strata Property Regulation* sets out the following formula:

$$\frac{\text{unit entitlement of strata lot}}{\text{total unit entitlement of all strata lots in the section entitled to use the LCP to which the contribution relates}} \times \text{contribution to operating fund}$$

Where the expenditure relates to shared operating expenditures benefitting only one type of strata lot in a section, the contribution to the operating fund is shared only by owners of the strata lots of that type. Section 11.2(2) of the Regulation provides

$$\frac{\text{unit entitlement of strata lot}}{\text{total unit entitlement of all strata lots in the section of the type to which the contribution relates}} \times \text{contribution to operating fund}$$

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<sup>12</sup> Section 195

If a strata lot's share of contributions to the operating fund is calculated as set out above, its share of a contribution to the contingency reserve or a special levy is calculated as follows:

$$\frac{\text{unit entitlement of strata lot}}{\text{total unit entitlement of all strata lots in the section}} \times \text{total contribution to CRF or special levy}$$

**(2) Sharing Expenses Relating to Strata Lots in a Section**

If a section has passed a bylaw taking responsibility for the repair and maintenance of specified portions of some but not all of the strata lots in a section, a contribution to the operating fund or special levy is shared only by the strata lots to which the contribution or special levy relates, calculated as follows:<sup>13</sup>

$$\frac{\text{unit entitlement of strata lot in section}}{\text{total unit entitlement of all strata lots in the section to which the contribution or special levy relates}} \times \text{contribution to operating fund or special levy}$$

If a strata lot's share of contributions to the operating fund are calculated as set out above, its share of a contribution to the CRF is calculated as follows:<sup>14</sup>

$$\frac{\text{unit entitlement of strata lot}}{\text{total unit entitlement of all strata lots in the section}} \times \text{total contribution to CRF}$$

**(3) Exceptions to the Formulas**

The formulas set out above may only be modified by a unanimous vote of the Strata Corporation.<sup>15</sup>

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<sup>13</sup> Section 11.3(1) of the Regulation

<sup>14</sup> Section 11.3(2) of the Regulation

<sup>15</sup> Sections 100 and 108(2) of the Act

**E. Administration**

The Act permits a section to govern its own affairs concerning matters that relate solely to that section<sup>16</sup>. Accordingly, eligible voters in a section may call and hold meetings and pass resolutions in the same manner as eligible voters in the strata corporation. Each section must also elect an executive, and the section executive has the same powers and duties with respect to the section as does the strata council with respect to the strata corporation. Members of the section executive are also eligible to serve on the strata council of the strata corporation.

**F. Bylaws and Rules**

The strata corporation's bylaws and rules will apply to each section, unless the section votes to amend the bylaws by a 3/4 vote resolution of the eligible voters in that section.<sup>17</sup> The bylaws may only be amended if the amendment is in respect of a matter that relates solely to the section. Examples might include:

1. bylaws relating to the use of yards and patios in a section comprised of townhouses; or
2. bylaws prohibiting smoking on common property in the residential section, but permitting smoking on common property in the commercial section.

The rules passed by the executive of a section must relate to the use, safety and condition of land or other property acquired by the strata, or limited common property designated for the exclusive use of all the strata lots in the section.<sup>18</sup>

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<sup>16</sup> Section 196 of the Act

<sup>17</sup> Section 197 of the Act.

<sup>18</sup> Section 197(4) of the Act.

**G. Effect of Court Judgments**

Court judgments against the strata corporation relating solely to the strata lots in a section are enforceable only against the owners of the strata lots in the section.<sup>19</sup> A strata lot's share of the judgment is calculated in the same way as a contribution to the contingency reserve fund. Each owner's liability is limited to that proportionate share of the judgment. For example:

$$\frac{\text{unit entitlement of strata lot}}{\text{total unit entitlement of strata lots in the section}} \times \text{total amount of judgment}$$

Note that this provision relates to a strata lot's share of a judgment against the section. It does not operate to limit damages or liability in cases where an individual strata lot owner is named in a claim or judgment. In those cases, a strata lot owner could be found jointly and severally liable with the section. An example might be liability for a fire that causes injury to third parties or damage to neighbouring property. In such a case the strata corporation and one or more owners could find themselves jointly liable if they are found to be at fault for the fire.

**H. Advantages and Disadvantages of Sections**

There are many advantages to sections. Sections empower owners with greater control over matters that are of concern to only to their section. The allocation and use of strata fees is often a flash point for conflict in a strata. Owners in a section enjoy greater control over common expenses, thereby reducing the potential for conflicts over these issues.

There are also some disadvantages to sections. Multiple governments within a single strata corporation, each with its separate budgets, bylaws and rules can add cost (in terms of strata fees) and bureaucracy (in terms of meetings) to a strata. Moreover, conflicts may not entirely be avoided, as owners clash over the allocation of powers between the strata corporation and the section.

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<sup>19</sup> Section 198 of the Act.

While every strata consisting of mixed uses or types of strata lots should consider sections as a form of strata government, the decision should be considered carefully and with the benefit of professional advice.

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