

INPUT

LAND AND REAL ESTATE
ISSUES IN BRITISH COLUMBIA

Stratas



INPUT

Input is the official publication of **The Real Estate Institute of BC (REIBC)**.

Input is produced three times per year and is distributed to REIBC members and partners free of charge. All rights reserved. The contents of this publication may not be reproduced, in whole or in part, without the prior written consent of REIBC. The Institute's members, officers, and staff do not accept responsibility for the statements or opinions expressed in *Input* and publication does not necessarily constitute endorsement.

2022-2023 REIBC Board of Governors

OFFICERS

President Cindy Nesselbeck, RI

President-Elect Geoff Radtke, RI

Secretary/Treasurer Clayton Olson, RI

Past President Keith MacLean-Talbot, RI

GOVERNORS BY DISTRICT

Cariboo/Northwest/Prince Rupert Geoff Radtke, RI

Fraser Valley Umesh Chand, RI

Kootenay Sean McGinnis, RI

North Fraser Tina Lee, RI

Thompson/Okanagan Mona Murray, RI

Vancouver Joanna Dlin, RI, Rob Greene, RI, Clayton Olson, RI, Edwin Kwok Yu Yan, RI

Vancouver Island Cindy Nesselbeck, RI, Jon Burbee, RI

Editor-in-Chief / Executive Director

Christopher Hamade

Managing Editor / Production

Uncover Editorial + Design uncovereditorial.ca

Advertising

REIBC

Printing

Initial Print & Copy Center initialprint.com

Submissions and ideas, contact:

Christopher Hamade

Tel: 604-685-3702 ext. 104 Toll-free: 1-800-667-2166

Fax: 604-685-1026 Email: info@reibc.org

Return undeliverable Canadian addresses to:

REIBC

1750-355 Burrard Street

Vancouver, BC V6C 2G8

View online: reibc.org

PRESIDENT'S MESSAGE



CINDY NESSELBECK, RI
REIBC PRESIDENT

Welcome to our Summer 2023 edition of *Input*. This is my last President's Message for *Input* as I prepare to pass the reins to our incoming President, Geoff Radtke, on July 1. I would like to thank all of our Governors and our community members—past, present, and future—who volunteer their valuable time and share their wisdom to ensure the continued success of REIBC. Most importantly, a thank-you to our members who engage with the Institute. From webinars and in-person events to informative research papers, timely articles, and an online learning experience offered by our ProSeries, all of our initiatives are developed for the benefit of our members and the betterment of the industry.

My connection to REIBC began in the late 1980s when I joined as a student member. Over the years, it has been my great privilege to participate in numerous roles in support of the Institute. And while I have watched our organization evolve in many ways during this time, it has been steadfast in the commitment to support the interests of our diverse membership and promote professionalism, education, and excellence within our industry.

As I write this, we are preparing for our next in-person event—the 2023 Awards Gala to be held at the Paradox Hotel in Vancouver on June 16. This event recognizes and honors our professional members who are exceptional contributors to the real estate industry in BC. The process of selecting the award recipients from the nominees is a humbling experience. The breadth and depth of professional achievements among our RIs is truly inspiring!

I would also like to extend a warm welcome to our new Executive Director, Christopher Hamade. Chris brings his extensive experience, enthusiasm, and lots of new ideas. I am looking forward to the Institute's continued evolution under his leadership.

Best wishes to everyone for a safe and enjoyable summer season.



COVER: Vancouver's Coal Harbour waterfront at dusk.
istock/ Dougall_Photography

ARTICLES

- 7 Strata Corporations and the
Land Title Registry
Carlos MacDonald, Land Title and Survey
Authority

- 10 Navigating Strata Windups in BC
Oscar Miklos, Refresh Law

- 14 The Importance of a Healthy
Contingency Reserve Fund
Jeremy Bramwell, RI, Strata Reserve Planning

- 18 Updates to Strata Legislation
and Regulations
Tony Gioventu, Condominium Home Owners
Association of BC

- 24 Investing in Hotel Stratas
Amanda Magee, Lesperance Mendes Lawyers

- 32 Resolving Strata Property Disputes
with the Civil Resolution Tribunal
J. Garth Cambrey, RI, Civil Resolution Tribunal

NOTES

- 2 President's Message
- 4 From the ED's Desk
- 5 Contributors
- 42 New Members
- 43 Directory

COLUMNS

- 13 Member Profile:
Damien Roussin, RI

- 20 ESG: Exploring the Impact on
Commercial Real Estate
Bruce Turner, RI, Heuristic Consulting
Associates

- 23 On the Job: Mike Blackall, RI
- 30 RI Awards
- 36 ASK A LAWYER: Methods
and Findings of Strata Dispute
Resolutions
John McLachlan, RI, LLB, and Andy Lee, JD,
Lex Pacifica

- 41 Organization Profile: VISOA

FROM THE ED'S DESK



CHRIS HAMADE
EXECUTIVE DIRECTOR
AND EDITOR-IN-CHIEF

I am thrilled to present to you the latest edition of *Input Magazine*, dedicated to an ever-relevant topic: “Stratas in British Columbia.” This edition is bound to hold your attention as we delve into the multifaceted world of stratas, shedding light on their inner workings, creation, dissolution, and beyond. You will find articles that aim to demystify the concept of stratas and their operation, providing both newcomers and seasoned professionals with valuable insights.

We dive into the processes of starting and winding up stratas. From the initial stages of formation to the complexities of dissolution, our articles shed light on the legal and administrative aspects involved. Understanding these procedures is crucial for strata councils, property managers, and anyone involved in the governance and management of such properties. We also keep watch on new legislation that affects stratas and consider in detail a key inner working of strata corporations—contingency reserve funds.

Are you interested in destination properties? We feature what might be a lesser-known aspect of stratas for some: hotel stratas. This is a unique property ownership model and we help you understand the benefits and challenges faced by those involved in this vibrant industry. For investors and enthusiasts alike, this is an exciting journey into the intertwined worlds of hospitality and real estate.

One significant highlight of this edition is an in-depth examination of the Civil Resolution Tribunal, which plays a vital role in strata dispute resolution. We bring you a comprehensive overview of how the tribunal works, its jurisdiction, and how it offers a user-friendly online format, lowering the barriers to effective resolutions. We also explore dispute resolution outcomes in other settings and with additional tools in our Ask a Lawyer column.

Lastly, we’d like to welcome Bruce Turner as a special topic columnist on the subject of environmental, social, and governance factors in real estate. Here, the first in a three-part series lays the groundwork for rich discussion.

ABOUT

Input was established in 1976. It ran at 12 pages and stayed that size for a long time. It was more like a newsletter then. When something new happened in the real estate industry, one of our RIs wrote about it, but the publication didn’t cover much industry information otherwise.

Many years later, *Input* runs at an average of 48 pages, sometimes a bit bigger or smaller, and our authors hail from around the globe. Our focus is on keeping readers informed with all aspects of the industry, particularly hot topics.

REIBC delivers *Input* to 4,000 people or organizations within the real estate industry.

Who receives *Input*?

- REIBC members
- REIBC subscribers
- PIBC members
- BC Notaries
- PAMA – Professional Association of Managing Agents
- SPA-BC – Strata Property Agents of BC
- Government ministries
- Real estate boards

Our mission is to empower our readers with the knowledge and expertise they need to navigate this intricate landscape confidently, and I want to extend a tremendous thanks to all our contributors for taking us on this journey.

Most importantly, this issue represents the excellent curatorial work of my predecessor, Brenda Southam, former Executive Officer of the Real Estate Institute of BC. A huge thank-you to Brenda for her years of service to the Institute and this publication!

Happy reading!

CONTRIBUTORS



Carlos MacDonald, BA, LL.B., is the director of Land Titles at the Land Title and Survey Authority of British Columbia (LTSA), responsible for the regulation of title practice in the province. MacDonald joined the LTSA in February 2011 as registrar of Land Titles for the Victoria Land Title Office. He also led the LTSA's E-business team, which contributed land title knowledge to the development and delivery of electronic services. Before his appointment as registrar, MacDonald had a general solicitor's practice in Victoria with a focus on real estate. ltsa.ca



Jeremy Bramwell RI, AACI, P.App., is the president of Strata Reserve Planning, one of BC's oldest and largest firms offering Depreciation Reports. Bramwell has written and been referred to in several articles regarding Depreciation Reports over the past decade. He has contributed material to the University of British Columbia Reserve Fund Planning program and was a subject matter expert to the BC Housing Policy Branch in 2022. His first book, *Depreciation Reports in British Columbia: The Strata Lot Owners Guide to Selecting Your Provider and Understanding Your Report*, is available on Amazon, StrataReservePlanning.com, and can be ordered from your local bookstore. stratareserveplanning.com



Oscar Miklos is the founding lawyer of Refresh Law, a law firm advising strata owners, strata council members, property managers, and residential and commercial landlords and tenants in all aspects of housing matters. Oscar is also the editor of HousingGuide.ca, providing free online references for homeowners in British Columbia. refreshlaw.ca



Tony Gioventu is the executive director of the Condominium Home Owners Association of BC (CHOA), a consumer association in British Columbia with over 250,000 members comprised of strata corporations, owners, and business members who serve the strata industry. In addition to serving on numerous boards and committees for government agencies and industry associations, Gioventu is the weekly columnist for the *Province*, *Times Colonist*, and syndicated media across BC. Since 2002 he has written over 1,000 columns dedicated to condo living and is the co-author of "The Strata Property Act: A Practical Guide to Bylaws," and "Understanding Governance: Strata Rules of Order and Procedures in British Columbia." With offices in New Westminster, Victoria, Kelowna, and Prince George, CHOA provides service to its members throughout the province, promoting an understanding of strata living, operations, management, and the interests of strata property owners. choa.cc.ca

WE WANT TO HEAR FROM YOU

Please let us know how you like the magazine, what you'd like to read about next, and if you'd like to be a contributing author. Also, check out our Facebook and Twitter pages for up-to-the-minute information on REIBC activities. reibc.org info@reibc.org

CONTRIBUTORS



Amanda Magee has been a member of the strata property law group at Lesperance Mendes Lawyers since 2015, where she focuses on a solicitor's practice. She works with strata corporations, strata owners, and strata managers on a wide variety of strata property and governance matters, including preparation of bylaws and resolutions, financing of major repairs and special projects, and review and drafting of various contracts, easements, covenants, and statutory rights-of-way. She also regularly assists strata corporations with bylaw enforcement as well as lien enforcement and other collection matters. Lesperance Mendes is located in downtown Vancouver and has been representing and advising strata corporations, strata owners, and strata managers across British Columbia since 1997. lmlaw.ca



J. Garth Cambrey, RI, is the Civil Resolution Tribunal's vice chair of Quality Assurance. He earned his B. Comm from UBC and has over 35 years of experience in BC's real estate industry, including owning a property management firm for 20 years and serving on the Real Estate Council for five years. Cambrey is an active member of REIBC, the ADR Institute of BC, and holds a Chartered Arbitrator designation with the ADR Institute of Canada. He has arbitrated many strata disputes and has been appointed by the BC Supreme Court as an Administrator for several strata property issues. Cambrey has been associated with the CRT since it started resolving strata disputes in July 2016, and he previously served as vice chair of Strata. civilresolutionbc.ca

COLUMNISTS



John McLachlan, RI, LLB, is a lawyer at Lex Pacifica Law Corporation in Vancouver. His practice is focused on civil litigation with an emphasis on real property matters. McLachlan has appeared as counsel before the British Columbia Court of Appeal, the Supreme Court of British Columbia, the Provincial Court of British Columbia, the Federal Court, and various Administrative Tribunals. lexpacific.com



Andy Lee, BA, JD, is a lawyer at Lex Pacifica Law Corporation in Vancouver. His practice is focused on civil litigation. Lee has appeared as counsel before the Supreme Court of British Columbia, the Provincial Court of British Columbia, and Administrative Tribunals. lexpacific.com



Bruce Turner, RI, is the president of Heuristic Consulting Associates, where he provides management consulting and advisory services related to real estate in Canada and internationally. His professional experience spans executive management, policy consulting, and technical advisory roles. Turner values stakeholder collaboration and effective negotiation to identify workable solutions and achieve results. He has authored several papers on topics including the future of work, complex property valuation and changing roles of valuers under uncertainty. bruce@heuristicadvisors.ca

STRATA CORPORATIONS AND THE LAND TITLE REGISTRY

Carlos MacDonald

Strata property is an increasingly common form of land ownership in BC, as higher-density housing and commercial developments are introduced to create more housing and economic opportunities for British Columbians. First established as a form of property ownership just over 50 years ago, today there are approximately 700,000 strata ownership units in the province, including townhouses, condominiums, and some single-family residence developments structured as strata corporations.

The process to create a new strata—from conception to reality—is a significant and complex project. It comprises myriad tasks ranging from site selection and development application to construction and sales. Embedded in the process is the requirement to establish new strata lots in the land title register.

The land title and survey systems of BC are administered by the Land Title and Survey Authority of BC (LTSA). As director of Land Titles at LTSA, I work together with the registrar of Land Titles to maintain the integrity, reliability, and security of BC's land title register as the official legal record of private property ownership in the province. Governed by the *Land Title Act* and other legislation, LTSA registers a range of land title applications and is the trusted and definitive source of all land title records, such as registered land title documents and survey plans.

REGISTERING A STRATA PROPERTY

For strata developments and corporations, the *Strata Property Act* works in tandem with the *Land Title Act* to establish key concepts and requirements that apply towards registration of strata property. Stratas take a number of different forms depending on the situation. In fact, some stratas may even be based on air space parcels rather than a traditional land-based arrangement.

- **Building strata plan:** This can include a new building or a previously occupied building, where common property comprises the lands and buildings that are not part of a strata lot.

Generally, the boundaries of the lots are defined by the centreline of the floor, walls, and ceiling.

- **Bare land strata plan:** In the case of bare land strata, common property comprises the lands that aren't part of a strata lot (such as roads or playgrounds), and the boundaries of strata lots are defined by survey markers set by a registered BC Land Surveyor.
- **Leasehold strata plan:** Purchasers acquire a lease of the strata lot as opposed to a fee simple interest, allowing a leasehold "landlord" to retain fee simple ownership of the lands. The "landlord" is limited to a form of government entity defined in the *Strata Property Act*.
- **Phased strata plan:** A phased plan provides developers with the ability to develop the land in phases and provides some flexibility while still following the specifics registered in the Phased Strata Plan Declaration.

To begin the process to establish a new strata in the land title register, developers will work with a registered BC Land Surveyor to create a strata plan to be submitted electronically to LTSA. The strata plan defines a significant amount of information about the strata as required by the *Strata Property Act*, such as boundaries of the parent parcel, location of the buildings if applicable, and the boundaries of the strata lots. The strata plan must be submitted to LTSA with certain accompanying documentation, including a Schedule of Unit Entitlement (Form V) with information such as the habitable area of residential strata lots that forms the basis of the unit entitlement, the mailing address of the strata corporation, and a schedule of Voting Rights, if applicable. Other documentation prepared with a lawyer, such as a Section 219 covenant or an easement, may also accompany the strata plan.

Prior to registration, the strata plan application needs to be reviewed and signed off by a number of stakeholders, depending on the specifics of the application. Generally



Residential building construction in Burnaby (2019). *istock/edb3_16*

this includes the owners of the parent parcel of land along with holders of registered charges, such as a mortgage. The land surveyor will certify the correctness of the plan and, unless it is a building strata plan certified as not having been previously occupied, it will be endorsed by an approving officer from the appropriate jurisdiction.

Once received at LTSA and reviewed by land title examination staff, the registrar of Land Titles will register a title to each strata lot. Each title includes a reference to “the unit entitlement of the strata lot as shown on Form V.” The registrar will also create a “general index” for endorsements (such as the Form V, bylaw amendments, and other documentation) and a common property record to record a charge or other interest that is specific to the common property.

Future filings by the strata corporation, such as granting an interest over common property, must be accompanied by a Certificate of Strata Corporation (Form E), which confirms that the relevant resolution has been passed by the strata owners. Eventually, in the life cycle of a strata corporation, future filings can include applications to amend or amalgamate strata plans, or to cancel and wind up a strata corporation.

MISTAKES TO AVOID

The work to prepare a strata plan application for submission to the land title office is extensive, and this work occurs in parallel with other processes to bring the development from concept to bricks and mortar. Inevitably,

errors may occur in the land title application process and there are mistakes that can be avoided when completing the information required to register or amend a strata plan.

For example, in the case of phased strata plans, the Phased Strata Plan Declaration (Form P) submitted with the initial phase establishes key information about the scheme of development for each phase in the strata. In some cases, submissions of the subsequent phases conflict with the details of the development itemized in the Form P submitted with the initial phase. While phased strata plans provide some flexibility, developers should take care when submitting a subsequent phase to ensure it does not conflict with the provisions of the Form P submitted with the initial phase.

For parcels of land in a phased development, it is beneficial for reciprocal easement applications to include a provision that provides for the easement to be extinguished when the final phase is registered. Such a provision in the Part 2 Terms of the reciprocal easement allows the applicant to request the “merger” of the easement with the application for the final phase, which results in the removal of redundant easements.

It is also important to ensure that some form of common property is appropriately depicted on the strata plan. For example, building strata plans that do not depict any form of common property are an issue. Strata plans that only show the boundaries of strata lots, with no depictions of common property, are not acceptable to

the registrar under section 68(3) of the *Strata Property Act*. Another issue arises under section 74 of the *Strata Property Act* regarding the designation of limited common property that provides strata owners with the exclusive use of the limited common property. Specifically, sketch plans that are not prepared by a registered BC Land Surveyor may contain an insufficient definition of the limited common property designation. The registered land title plans and documents are relied on as the definitive source of property ownership, and therefore must be unambiguous and accurate.

Amendments to strata plans are another source of errors in land title applications. Strata plan amendments are set out in Part 15 of the *Strata Property Act* and include direction for subdividing or consolidating strata lots, changes to common property and parking allocation, and other amendments. Paying careful attention to the statutory requirements in Part 15, together with the sometimes unique submission requirements set out in the *Land Title Practice Manual*, can help ensure that the associated land title applications are registered without issue.

While strata developers and owners work with lawyers, land surveyors, and other professionals to navigate the land title submission process, a number of resources exist to help all parties understand the associated requirements and legislation. The Continuing Legal

Education Society of British Columbia has two publications specific to strata property practice: *The Land Title Practice Manual* provides an overview of the *Strata Property Act*, related regulations, submission guidance, practice notes, and selected case law, and the *British Columbia Strata Property Practice Manual* addresses legislative requirements and practical concerns in the operation of a strata corporation, including its creation, governance, bylaws and rules, and finances. British Columbia Law Institute's *Strata Property Law – Phase Two* is another valuable source of information. Other useful sources of information are British Columbia's strata housing resources on its website, along with those published by Condominium Home Owners Association of BC and Vancouver Island Strata Owners Association.

At LTSA, we are proud of the work we do to administer the land title and survey systems of British Columbia, which provide the foundation for all real property business and ownership in the province and are essential to BC's economic and social prosperity. Working together with our customers, we can ensure that the land title and survey system remains a trusted and accurate source of property information for generations to come.

RI



Paradox Hotel Vancouver
1161 W. Georgia St, Vancouver, BC

NAVIGATING STRATA WINDUPS IN BC

Oscar Miklos

In British Columbia, the resilient real estate market and legislative provisions in the *Strata Property Act* (the Act) amended in mid-2016 to facilitate such transactions have together led to an increase in strata windups. From developers seeking prime land for redevelopment to the escalating costs of maintaining an aging strata development, the reasons compelling strata corporations to consider winding up are varied. This process, though procedurally complex, can be navigated successfully by strata councils with the help of key players such as experienced commercial realtors, legal counsel, and other professional advisors.

WHY SELL?

A strata “windup,” also known as a strata dissolution, essentially entails the termination of a strata corporation and the sale of its lands. The primary reasons for strata corporations to consider winding up usually relate to aging infrastructure and a corresponding increase in maintenance costs or enticing offers from developers or investors predicated on additional density that can be achieved on the land through redevelopment.

Older strata developments, often with limited funds set aside in their contingency reserve fund for necessary repairs and maintenance, can face significant financial strain. As the development ages, the costs associated with maintaining the building can become unmanageable for owners who will often face a series of special levies for which they may not have adequately budgeted. In some such cases, economics would dictate that it may make more sense to sell the strata corporation’s lands to prevent further financial distress rather than continuing to pay for the upkeep of the aging development.

On the other hand, in a hot real estate market, one or more developers or investors might approach a strata corporation with an offer to purchase the land for the purpose of redevelopment. Such offers often come with a significant premium over the sale price that owners could

achieve by selling their strata lots individually, providing an attractive financial incentive for owners to consider winding up the strata corporation.

HOW DO YOU SELL?

While it is strongly recommended to seek input from owners early on to gauge the level of interest, the Supreme Court in *Buckerfield v. The Owners of Strata Plan VR. 92*, 2018 BCSC 839, has confirmed that for the strata council to retain the services of a commercial realtor to start marketing the development for sale, no preauthorization is required from the ownership group. In other words, a simple majority vote by the strata council is sufficient to launch the very first step of the windup process.

Once a prospective purchaser has submitted an offer to purchase the lands of the strata corporation (typically by way of a letter of intent) and the strata council has voted to accept such offer, the strata council should retain the services of a lawyer to draft and negotiate the terms of a purchase and sale agreement which will include various conditions related to the windup process that must be removed or fulfilled prior to the deal going firm.

The first of these approvals is an 80% vote by the owners of the strata corporation. This was a change implemented in 2016, reducing the voting threshold from unanimous approval under the Act to make it easier for strata corporations in BC to dissolve. However, achieving even this lower threshold of support among owners can prove to be complex as some owners may oppose the windup process for various reasons, including a perceived lack of adequate consultation from the start, a fear of lack of availability of inventory and higher costs when buying back into the housing market, and disagreement among owners about the prescribed distribution of the sale proceeds.

The 80% vote must occur during a general meeting of the owners and strict procedural rules apply both



Whiting Way and Foster Avenue in Coquitlam. *Daniel Ha*

in respect to attendance at this meeting as well as the contents of the resolution put before the owners. Most importantly, the resolution will provide a breakdown of the distribution of the proceeds of sale. This distribution method is determined by Section 278 of the Act and will depend on the date that the strata corporation came into existence. It should be noted that while some owners may object to the prescribed method for distributing the proceeds of sale, the strata corporation is required to comply with the distribution method set out by the Act.

If the 80% vote is successful, the strata corporation must thereafter apply to the Supreme Court for approval of the sale and, concurrently, if the windup is done through a liquidator, apply to have the liquidator approved. Section 278.1 of the Act sets out the considerations the Court must make when deciding whether to approve the sale.

The Court evaluates various factors, including whether the sale is in the best interest of the owners and whether, if the winding-up resolution is confirmed, there would be significant unfairness to one or more owners, charge holders, or other creditors. The Court's decision in *Strata Plan NWS837 (Re)*, 2018 BCSC 564, serves to illustrate one instance of an application of such considerations. It is crucial to remember that even though a strata corporation may secure the 80% vote, the Court still retains the power to reject the windup if it believes the outcome would be inequitable based on a consideration of the factors set out in the Act.

Following the Supreme Court's approval, barring any appeals of such decision, the strata corporation will, most often, complete the windup process through an appointed liquidator. Before the strata corporation can be dissolved it must pay all outstanding debts and obligations, and once this is done the strata corporation must distribute its assets and liabilities among its owners. This distribution is typically done in accordance with the special resolution passed by the owners and the plan for distribution submitted with the Court application for dissolution. Once the distribution of assets and liabilities has been completed, the strata corporation is considered terminated and the winding-up process is complete.

ARE THERE ANY ALTERNATIVE APPROACHES?

The complex process of strata windups can be compared to "strata assemblies" whereby a developer or investor enters negotiations with each individual owner of the strata corporation to purchase their interest in the strata lot. Typically (but not always), a contract of purchase and sale entered by a developer or investor in the context of a strata assembly will be conditional on the developer being able to "assemble" the development. In other words, it will be conditional on getting the rest of the owners under contract as well.

In strata assemblies, the strata corporation continues to legally exist until the developer purchases all strata units, after which the developer, as the single owner of all strata lots, will go through an expedited windup process to dissolve the strata corporation.

While strata assemblies are often thought of as an excellent alternative to the costly and procedurally complex process of windups, they come with their own unique challenges. A well-orchestrated strata assembly can proceed faster than a strata windup, but strata assemblies (much like land assemblies) are predicated on unanimous buy-in. In other words, if all owners agree to sell and are happy with their individually negotiated deal, the process is not much different from any conventional sale of a property. It is for this reason that some purchasers may even offer a premium or uplift on the aggregate sale price if all owners can agree to sell together.

However, the greater the number of owners in a development, the greater the odds that one or more holdouts could impede the sale process. For this reason, strata assemblies are often effective only in smaller strata developments. Moreover, a poorly orchestrated strata assembly can turn into a nightmare scenario where owners are pit against each other in an effort to negotiate a better deal with the developer than their neighbour.

OPPORTUNITIES AHEAD

Strata windups can bring both opportunities and challenges for strata homeowners. While they can provide a financial windfall, particularly in high-demand areas, they also require careful navigation of complex legal and procedural processes. In the face of a possible windup, it is crucial for strata owners to be well informed and for their strata council to seek appropriate legal and professional advice.

In certain situations, owners may also explore the possibility of a strata assembly in an attempt to avoid the costs associated with a windup. However, owners who are looking to proceed by way of a strata assembly should be mindful of the limitations and possible pitfalls of this alternative method to achieve a group sale.

A well-informed understanding of each process, guided by appropriate professional advice, can allow strata homeowners to navigate these waters successfully and achieve a beneficial outcome.

MEMBER PROFILE

DAMIEN ROUSSIN, RI

CHIEF EXECUTIVE OFFICER
DORSET REALTY GROUP



Damien Roussin

WHAT WORK DO YOU DO PROFESSIONALLY?

My primary responsibility is leading management and strategy efforts for a full-service real estate brokerage and asset management firm. This involves overseeing the day-to-day operations as well as developing and implementing long-term plans for growth and success. I also work closely with clients to ensure their needs are being met and that they are receiving the highest level of service possible.

One of the biggest benefits in my role is the opportunity to learn from and meet people from every sector of the real estate industry in Metro Vancouver. I find it incredibly rewarding to be able to network with such a diverse range of individuals, as it provides me with a unique perspective on the real estate market and helps me stay up to date on the latest trends and developments. I also enjoy being part of a growing and developing team. It's incredibly fulfilling to work alongside talented and dedicated individuals who are passionate about their jobs and committed to providing exceptional service to our clients.

WHAT DID YOU LEARN FROM A JOB YOU HAD EARLY IN YOUR CAREER?

Early in my career I was a property manager and a commercial leasing agent. I managed a portfolio of properties, including stratas, office buildings, retail spaces, and industrial properties. Having an end-to-end view of real estate assets is something I value greatly and attribute to having worked on both sides of the business from an early age. This means I'm able to think about real estate as an entire entity rather than focus on one facet at a time.

WHERE DO YOU VOLUNTEER AND WHY?

Volunteering with Variety, I saw the lasting impact on a child's life when they are given the opportunity to reach their full potential and live happier, more fulfilling lives, regardless of their background or circumstance. Being a part of this organization and contributing to this positive impact was highly rewarding. On the board of Richmond Caring Place, I was able to use my skills and knowledge in the real estate industry to help organizations facing affordable rent and stability issues. It was a particularly meaningful opportunity to lend my expertise so that these groups can continue to serve our community in tangible and impactful ways.

WHAT ARE YOUR PROFESSIONAL AND PERSONAL ACHIEVEMENTS?

My proudest professional achievement is that I've been with this company for most of my professional career. Working my way up through the organization has afforded me invaluable experience in both the business and the client's business from the bottom up. My most significant personal achievements are building a family and maintaining a balance between my professional goals and personal responsibilities.

WHAT WOULD OTHERS BE SURPRISED TO FIND OUT ABOUT YOU?

I am an avid curler, and even captain a team.



Champlain Towers in Miami, Florida, two days after collapse (2021). *istock/ felixmizioznikov*

THE IMPORTANCE OF A HEALTHY CONTINGENCY RESERVE FUND

Jeremy Bramwell, RI

The *Strata Property Act* (SPA) requires a strata corporation to have two bank accounts: an account for annual expenses and a reserve account for capital repairs, replacements, or renewals of components and assets. The bank account used for running the complex regularly is the operating account, while the long-term reserve account is called the Contingency Reserve Fund (CRF).

WHY DO WE NEED CONTINGENCY RESERVE FUNDS?

It's hard to understand today that some self-administered strata corporations do not have a CRF. One common statement we get is that the strata is too small, and they can operate from the operating account.

The first reason comes from Section 92 of the *Strata Property Act Regulations*, which states that each strata corporation requires a CRF, even bare land developments. The main reason legislation is required is because strata lot owners have done a less than adequate job saving for the future when they were allowed to do it themselves.

Second is the administrative issue. Section 105 of the SPA requires a vote at an Annual General Meeting (AGM) if there is a surplus, in order to determine if how much can go to the CRF, carried over as a surplus to the next year, or used to reduce contributions to the following year's strata fees, after repaying any deficit from the past year. Such a vote does not apply to the CRF. In other words, legislation has been created to make sure that the operating account is reviewed annually to stop overpayments, while the CRF funds are saved as capital costs.

Third, the CRF is set up so that expenditures are easier to approve and get less resistance from the "it can wait" owners by allowing a 50%+1 majority vote for spending

approval for items in a Depreciation Report, as opposed to the 75% majority vote required for the annual budget.

The CRF is established at the time the development is first occupied. Currently, the initial contribution is 5% of the estimated first year's operating budget, made by the developer. However, in January 2023, the BC Government changed the developer's initial contribution to 10% of the operating budget, effective November 1, 2023.

British Columbia, like all provinces, has regulations requiring a legal or statutory minimum balance in the CRF account. Prior to November 2023, the minimum balance was equal to 25% of the operating account. Occasionally, a CRF balance may drop below the minimum level because of an emergency or a large renewal program. In these cases, the CRF had to be topped by a minimum amount—10% of the current year's operating account or a lower amount required to meet the statutory 25% limit, whichever was less. With the January 2023 changes, the SPA now requires that the annual contributions of an existing strata corporation are 10% of the annual operating budget, with no catch-up provisions or limits. This also takes effect as of November 1, 2023.

In my firm's experience, the statutory minimum has always been below what is required for proper building maintenance because there is no relationship between the operating expenses of a development and the replacement costs of building components, like siding and windows. As well, while strata corporations try to minimize the operating budget to 2% to 3% annually, construction costs are increasing many times that. Therefore, following the statutory minimum is a recipe for creating an unhealthy fiscal situation for all strata corporations.

HOW TO DETERMINE IF A CRF IS HEALTHY?

The answer lies in the Depreciation Report.

In 2009, the BC Government made Depreciation Reports mandatory. However, the legislation had a clause allowing them to be deferred indefinitely. In a conversation with one of the people who wrote this clause, the legislators thought that market forces would drive people to get reports. The opposite occurred as many owners voted to defer them to save money.

In 2022, it was estimated that only 20% of strata corporations in BC were compliant, meaning they had a report completed in the past three years. This means that most owners have no idea if their CRF is healthy at this time or will be in the future.

The internationally accepted method of measuring the health of a CRF is Reserve Adequacy or "Percent Funded." This is the amount of money in the CRF account at the end of the year over the estimated amount if the account were fully funded, expressed as a percentage. Every standard for completing a Depreciation Report requires benchmarking the financial status of the CRF.

In BC, high deferral rates and low minimum statutory funding requirements have resulted in underfunded developments.

It's generally accepted that most strata corporations in BC have a reserve adequacy of 10% to 25%, meaning they are only 10% to 25% fully funded. The reason this is important to understand is that in valuation theory, if the item being compared is similar, there is no adjustment. So, if the CRF balance is in that range, there is no appraisal adjustment. Based on North American standards, anything below 35% is rated as "critical," meaning the development can expect many special levies of varying amounts. Therefore, one can say that nearly all strata CRF finances in BC are in a critical state.

Many people in BC are not aware that we have one of the lowest strata fees of anywhere in the country. For example, in Ontario the typical condominium fees are two to three times what is paid in BC. Property management in Ontario is more expensive, but more importantly, condo owners in Ontario must pay a higher level of funding to their CRF accounts. This has been the case in Ontario for decades; it is baked into the price for a condo.

WHY IS A HEALTHY CRF SO IMPORTANT?

The importance of having a healthy strata fund cannot be understated. Strata lot owners need to understand that there are other people looking at the CRF.

The Strata Council has a fiduciary duty to the strata corporation to maintain the development. As part of this, it should be the goal of a strata council to financially plan so that special levies are minimized. This is done by maximizing the reserve adequacy ratio, rather than focusing on dollars.

The most recent extreme example of failure was in Florida, where it appeared that a building was sufficiently funded, but it was really in poor shape.

On June 24, 2021, Champlain Towers South, a 12-storey condominium complex in the Miami suburb of Surfside collapsed, causing the deaths of 98 people. The building had a report completed by an engineering firm that indicated \$10,000,000 worth of work was required. There was \$700,000 in the CRF, meaning for this project they were about 7% funded.

It came out later that the CRF fees had stayed the same for ten years, and the owners had voted down special levies to pay for the work shortly before the collapse. As the repair costs increased, the reserve adequacy ratio declined. The building failed financially before failing physically. It has since been reported that the strata council members of the past 10 years are being sued for failing this responsibility.

One thing not commonly discussed is special levy fatigue. It occurs in unhealthy strata corporations where the owners refuse to increase their fees or have unrealistically low cost expectations. This is when it seems that every year or second year there is another special levy to make up for the shortfall. After a while, the owners get tired of them and start to reject them on principle. The problem is that the development is running on special levies, not annual contributions supplemented with levies. Eventually some owners cannot pay due to poor financial planning.

Foreclosure of an owner's interest in a strata lot is the last thing anyone wants. Yet the probability of this action by the council increases the lower the reserve adequacy ratio goes. New owners with less equity and seniors on fixed incomes are the usual groups that can get foreclosed on when there is a very high special levy. A development with a healthy CRF will usually have minimal risk of foreclosure, as any special levy will be minimized.

This is why buyers look at the reports. They want to get an idea of their financial obligation, and usually the first 10 years of the cash flow projections will be the most important. A report showing poor fiscal management resulting in many future special levies will not attract many buyers.

There was a BC Housing Policy Branch consultation committee for Depreciation Report legislation during 2021 and 2022. The worst kept secret in property management circles is that the deferral option will be removed. There will be consequences to this change.

Credit unions, which are provincially insured, will most likely be required to make sure that the Depreciation Report is part of the document package to get a mortgage. As time progresses, credit unions will start to track the reserve adequacy of the strata corporations to measure risk.

Insurers currently ask if there is a Depreciation Report. Once they become mandatory, expect these to be reviewed and the premium to be based on them.

Insurers want to know that the CRF is healthy enough that, if there is a problem, the owners can take care of it and not use the insurance policy as a maintenance program, which has happened in the past. They also will be tracking the building to see if the maintenance is being deferred, which can be a reason for large insurance claims when the deferred item, like a roof, fails. Work is usually deferred when there is a lack of funds.

In both cases, the reserve adequacy ratio will be a fast indicator for the risk analysts.

In summary, the *Strata Property Act* requires a CRF for each strata, but the legislation sets bare minimum levels that do not support a healthy strata corporation. A healthy strata corporation is one with a Depreciation Report that indicates their reserve adequacy, with a plan to increase the percentage over time. The result is more interest from the market, possibly better mortgage and insurance premiums over time, and owners who experience fewer and smaller special levies that reduce the likelihood an owner will be forced to sell.

RI



Congratulations to the

2022 Land Awards Winners

Wayne McCrory
Land Champion

Taylor Wale
Emerging Leader

Tsilhqot'in Wildfire Management Project
Project: Land Use and Conservation

Water for Fish
Project: Fresh Water

Tea Creek Farm
Project: Food Lands

First Nations Home EnergySave
Project: Built Environment

Radon in Real Estate
Project: Real Estate



UPDATES TO STRATA LEGISLATION AND REGULATIONS

Tony Gioventu



istock/ SDI Productions

Recent updates to strata-related legislation in BC has resulted in significant changes to be navigated by strata corporations and councils.

BILL 22

The *Strata Property Act* and *Regulations* have experienced a number of amendments in recent months.

COVID-19 restrictions forced strata communities into electronic meetings in 2020. Prior to the end of the emergency order that enabled electronic meetings on December 31, 2022, electronic participation was permitted for annual or special general meetings under the Act for all strata corporations. Now, as of December 31, 2022, electronic meetings are enabled for all general meetings. This no longer requires a bylaw amendment, with the provision that electronic participants must be capable of communicating with each other and the chairperson is able to identify all eligible voters.

The pressure on insurance renewals and rapid increase of deductibles, and increased demands, resulted in a variety of changes that significantly affect most communities.

BILL 14

Bill 14, *Municipal Affairs and Housing Statutes Amendment Act*, introduced changes to the reporting of insurance renewals to owners. Strata corporations are obliged to inform the owners if there is any material change to the renewal of the policy with respect to cost, deductibles, or exemptions imposed on a policy renewal. Insurers must give notice to the strata corporation with at least 30 days prior to the policy renewal of any material change in the policy or cost, enabling strata corporations a window of time to investigate alternatives. Within Bill 14, several amendments were added to insurance requirements and depreciation reports that enabled additional provisions to be implemented under the regulations.

BILL 44

In November 2022 we saw the most important amendments for many strata corporations under Bill 44, the *Building and Strata Statutes Amendment Act*.

Bylaws that prohibit, limit, or restrict rentals of a strata lot or portion of a strata lot are no longer permitted. Short-term accommodation bylaws continue to be in full force and effect, with the maximum penalty of \$1,000 per day of violations.

The reversal of rental bylaws included the repeal of owner developer rental disclosures, the definition of family status that applied to exemptions, reversal of fines for rentals up to \$500, and the provisions relating to rental bylaws. All strata lots, unless limited by a covenant, are now eligible to be used as rental properties.

Age restriction limitations were amended but continue to permit bylaws that limit occupancy to 55 years and older. With the limitation, exemptions were adopted for live-in caregivers. Regulations adopted as of May 1, 2023, provide for a wide variety of exemptions from age restriction bylaws to recognize changes in family status for two classes of occupants: those who are under 55 (19 and over) and those who are 55 and over. Those occupants

residing in a strata lot at the time an age restriction bylaw is passed are exempt from the bylaw. The regulation requires a bit of navigation, but the overall effect ensures changes in family status now have protection, no longer requiring a property owner or tenant to move from the property if their family status changes.

The term “specified resident” creates a definition for either class of occupant where the exemptions apply to residents under 55 when a bylaw is adopted for over 55. Close attention to the regulation and the exemption is essential for strata corporations to correctly enforce and apply their bylaws and exemptions. A resident under 55 (19 and over) who resides in the strata lot at the time a 55-and-over bylaw is passed is exempt from the bylaw and becomes a specified resident. If their family status changes with the addition of a spouse or children, those persons are exempt. Similarly, a person who is 55 and over is a specified resident, and if their family status changes with the addition of a spouse, children, or adult children of the resident, those persons are exempt. A spouse is deemed to be someone in a marriage or marriage-like relationship. Where persons over 55 become designated caregivers, trustees, or guardians of family members under the age of 55, those family members are exempt, and caregivers who are resident are exempt.

RI



Plan your next meeting, conference, trade show or event in Nanaimo and give your attendees an unforgettable experience.

Planning an event? Tourism Nanaimo can help!

Choose a Nanaimo meeting venue — from a grand conference centre to a more intimate space — to best suit your group. Bring everyone together in a small but vibrant downtown space just steps from the harbour with shops and restaurants nearby.

tourismnanaimo.com/meetings



IT PAYS TO HOST YOUR MEETING IN NANAIMO



Learn more about the incentives available to groups.

Visit tourismnanaimo.com/meetings for more information or email us at meetings@tourismnanaimo.com

Special event grants are also available through the Nanaimo Hospitality Association. Scan the QR code for application details.



ESG

IS THERE AN ESG PREMIUM (OR DISCOUNT) IN CRE VALUATION?

PART 1: EXPLORING THE IMPACT ON COMMERCIAL REAL ESTATE

Bruce Turner, RI

Environmental, social, and governance (ESG) factors introduce questions in commercial real estate (CRE) valuation and investment. This is the first of a three-part series.

Real estate professionals recognize sustainability in valuing green and high-performance buildings where their unique features may result in lower energy and water costs, differing operating costs, and improved marketability. There may also be special tax advantages or incentives that offset the gross cost of these features. Valuers may be challenged to recognize green features with limited sales evidence in each market. Generally, the income capitalization and cost approaches are considered to provide more credible value conclusions.¹

ESG AS ASSESSMENT CRITERIA

International Valuation Standards Council (IVSC) reports that ESG factors are criteria increasingly used to assess the impact of the environmental, social, and ethical practices of companies on their operations, financial performance, and attractiveness to investors. IVSC's perspective paper goes on to say that ESG factors should be considered from a tangible asset's perspective as ESG principles affect not only the behaviour of owners and operators of assets, but also other matters related to the physical properties themselves.²

While environmental factors are generally addressed in appraisal practice for green buildings, social and governance factors present greater challenges. The meaning of social value is often clouded in uncertainty by the lack of an internationally recognized measurement framework, standards of practice, and quality assurance.³ Social values are influenced by and perceived differently across cultures and geopolitics. That is, social factors

tend to have a regional context and do not readily lend themselves to analysis and quantification in the valuation process. Without some rationalization for standardizing these differences, comparisons and quantifications may not be meaningful, and efforts at assigning a monetary value may be subject to misinterpretation.^{4,5}

CORPORATE GOVERNANCE

For commercial real estate, governance has less to do with individual assets, or even portfolios, and more to do with how a business is structured, led, and how its decisions are made.

Questions that consider ESG risks related to governance could include:⁶

- Are executive compensation packages tied to benchmarks in an ESG strategy?
- Do the key stakeholders have ESG and net-zero strategies with specific targets and action plans?

Every aspect of TELUS garden's architecture, mechanical design and energy resource utilization provides next-generation energy-saving solutions. The numerous sustainability features include a district energy system, triple-pane curtain wall design, operable windows, 100% outside-air supply, radiant heating and cooling, and solar panels, among other innovative technologies to reduce the building's footprint. The net result is LEED Platinum certification and one of the highest LEED score cards in Canada.

— Adapted from telusgarden.com/sustainability

flickr/Richard Eriksson (2019)



- Are data governance practices in line with ESG Principles of Reporting for Private Real Estate?⁷ (What business ethics do the key stakeholders subscribe to? How transparent are data provided to stakeholders? What kind of reporting practices are in place?)
- How do the principal players reflect and report on diversity and inclusion?

Good governance practices directly impact an organization's ability to build stakeholders' trust. Corporate governance structures that adopt ESG frameworks are better equipped to identify and respond to changing conditions that contribute to obsolescence, regulatory non-compliance, litigation, and reputational risk.

Upon clarifying the purpose of a valuation, multiple stakeholder perspectives that influence governance may need to be considered in a decision matrix weighing the expectations of each, considered in terms of the relative contributions of material non-financial factors on financial feasibility. Consider, for example, the valuation of a social housing complex burdened with a restrictive covenant that constrains the site's highest and best use.⁸ Alternately, ESG perspectives can assist site selection processes by integrating commuter emissions, demographics, and concentration of job types into site evaluation.

Today, the blurring of property and business values extends to all property types and industry sectors, including hotels and hospitality variations (including timeshares and short-term rentals), self-storage, manufactured housing and for-rent subdivision communities, real estate investment trusts with triple-net lease structures for big-box retail stores, e-commerce warehouses, and mixed-use adaptive reuse projects.⁹

Governance for CRE assets is typically only defined at the portfolio or corporate level. The following is a functional definition at the asset level: Asset level governance integrates intangible and tangible assets with an ESG strategy, requiring a shift in focus from providing bricks-and-mortar space to achieving holistic solutions, while aiding potential risk mitigation and preserving long-term value.

MARKET RECOGNITION

Do ESG factors receive market recognition beyond "green value"¹⁰ relating primarily to energy?

The UN's Sustainable Real Estate Investment initiative states that the people who manage global real estate assets—valued at around US\$50 trillion—are one of

the most important decision-making groups to address climate change and responses to the pandemic.

The buildings sector has one of the highest carbon footprints, currently contributing 30% of global annual greenhouse gas (GHG) emissions and consuming around 40% of the world's energy. Following through on the 2015 commitments made in Paris to limit global warming means avoiding 77% in total CO2 emissions in the buildings sector by 2050 compared to today's levels.

Climate change, growing recognition of social inequity, and the pandemic are contributing to more robust approaches to sustainability-related risks. According to recent surveys, the majority of real estate investors have included ESG criteria in their investment strategies. ESG factors are increasingly recognized in stakeholder capitalism (vs traditional shareholder capitalism) as critical drivers of long-term value. And in its *2021 Sustainability Report*, Royal Institute of Chartered Surveyors reported rising occupier and investor demand for green/sustainable buildings with approximately 60% of global survey respondents reporting a modest to significant increase.

Sources

1. Appraisal Institute. *The Appraisal of Real Estate*, Fifteenth Edition. 2015.
2. IVSC. *International Valuation Standards Exposure Draft for Consultation*. 2023. URL: IVSC 2023 Exposure Draft
3. IVSC. *Perspectives Paper: Defining and Estimating 'Social Value'*. URL: 2021 IVSC Perspectives Paper - Social Value
4. Bala Gnanam, Vice President, VP - Sustainability, Advocacy & Stakeholder Relations, BOMA. Interview - April 19, 2023.
5. PwC Canada. *Creating value from the S factor of ESG in real estate*. 2023. URL: *Creating value from the S factor of ESG in real estate* | PwC Canada
6. *ESG Performance: A Critical Issue for Canadian Real Estate*. PwC & ULI. URL: *2023__pwc-emerging-trends-in-real-estate-2023.pdf
7. NCREIF PREA Reporting Standards URL: Handbook Volume II: Research: ESG Principles (wordpress.com)
8. BC Property Assessment Appeal Board. *Chishaun Housing Society v. Area 09 (2023 PAABBC 20220005)*. 2023. URL: *Chishaun Housing Society v. Area 09*
9. CCIM Institute. *Appraising Change*. Fall 2022. URL: *Appraising Change* | CCIM Institute
10. Through certifications such as LEED, BREEAM, and BOMA Best for individual assets.

ON THE JOB



**MIKE
BLACKALL, RI**

**VICE PRESIDENT AND
MANAGING BROKER,
CENTURY 21 PRUDENTIAL
ESTATES (RMD) LTD.**



WHAT DO YOU DO IN YOUR PROFESSIONAL ROLE?

I wear many hats, responsible for overseeing all of our licencees (strata managers, rental managers, and realtors), business development, onboarding and offboarding clients, training, recruitment and hiring, and overall operations and finances of our company. In addition, as I am licensed for all three real estate services, I am an active realtor in Metro Vancouver, and I manage a small, exclusive rental portfolio.

Most days I am in the office assisting with the operations of our brokerage or attending meetings. Sometimes I will spend part of the day on site at properties meeting with clients, potential clients, trades, or vendors.

WHAT PREPARED YOU FOR THIS ROLE?

While my education in Business Management from Langara, and Urban Lands and Economics from Sauder School of UBC, were very helpful, I believe the thing that prepared me the most was the direct experience working in the office and in the industry over the years. I have worked in almost every position or department in our company and that has provided me with a deeper understanding of the different knowledge and processes that are involved in the real estate industry, and more specifically the strata management industry, as that is our largest department.

WHAT DO YOU FIND CHALLENGING ABOUT YOUR WORK?

With many of the strata corporations we help manage being residential properties, we are often assisting owners with their homes, which I believe increases the level of emotion involved in our interactions with our clients. Also, add to that the lack of knowledge that the general public

has about how strata corporations operate. Owners often think the strata management company is the decision maker and has authorization to spend the strata corporation's funds, but this is not the case. The strata council makes the decisions, and it is made up of owners elected by other owners, who volunteer their time to assist with the operations of the strata corporation.

WHAT DO YOU ENJOY ABOUT YOUR WORK?

I have found that the variety that comes from working in strata, rental, and sales has provided me with a better understanding of each role and the ability to view the position from another perspective. Also, I enjoy meeting and working with the various professionals in the industry, be they licencees, vendors, or trades.

WHAT DO YOU WISH PEOPLE KNEW ABOUT THE WORK YOU DO?

Strata managers and others in the industry work very hard to cope with the volume of work. There has been some recent media coverage about the shortage of strata property managers in BC, but I feel this has always been the case during my 10+ years in the industry, and I am sure my father, Bill Blackall, who has been in the industry for over 40 years, would say the same. The problem in the past decade has been that the amount of new developments and number of new multi-family or stratified properties in the Lower Mainland has far exceeded the number of new strata managers joining the industry.

WHAT GOALS ARE YOU WORKING TOWARD?

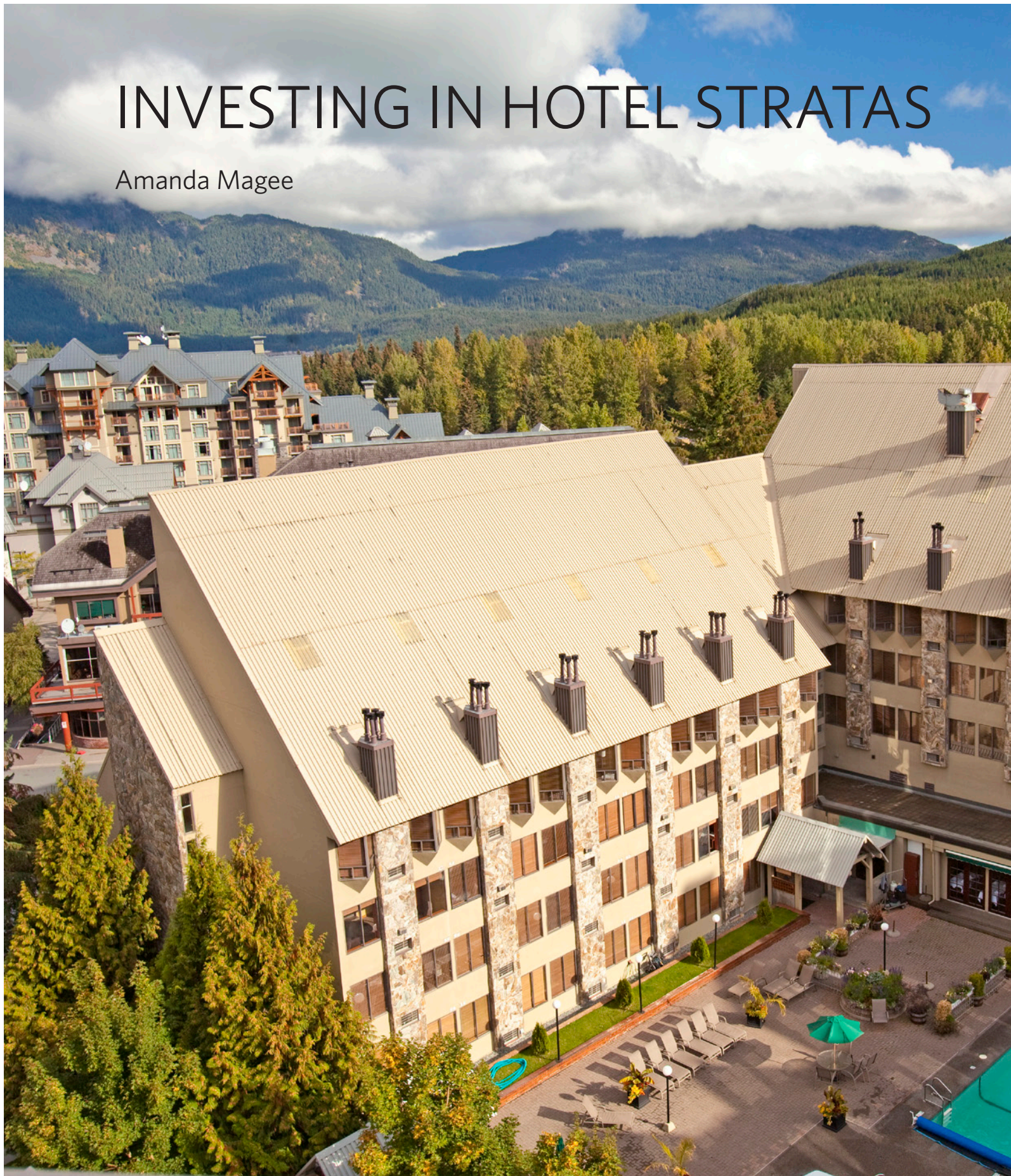
Many of my personal business goals revolve around improving our company and brokerage—from implementing new technology and creating efficiencies and improving processes to the overall appearance of our office space and to improving and sharing the knowledge I have acquired over my 10+ years in the industry to our licencees and staff.

WHAT CHARACTERISTIC OR PERSONALITY TRAIT WOULD BE BEST FOR THIS TYPE OF CAREER?

We often say in the industry that to be a strata manager you need “thick skin.” If you are someone that takes things personally, it would be very difficult to do the job, as we are most often dealing with complaints and problems. I feel there is a difference between caring about the work you do and taking it personally.

INVESTING IN HOTEL STRATAS

Amanda Magee





Mountainside Lodge in Whistler at 4417 Sundial Place, Whistler (2010).
flickr/Shell Vacations Hospitality

People are often surprised to learn that strata corporations in BC can consist of a number of different types of property besides traditional residential and commercial condominium buildings, including industrial warehouses, shopping malls, and even marinas. One such non-traditional type of strata corporation is a hotel strata.

A hotel strata is a strata corporation that operates as a commercial hotel, but with the individual accommodation units in the hotel separately titled and owned by investors. Units in strata hotels can range from a standard hotel room in a full-service name-brand hotel, such as a Westin or Hilton, to a condo-style suite with full kitchen and laundry amenities.

The development usually includes one or more strata lots leased to a hotel management company that runs the hotel operations and may include other commercial strata lots operating as restaurants, retail, and other businesses.

Unsurprisingly, hotel stratas tend to be in tourist destinations, with the highest concentrations existing in downtown Vancouver, Whistler and other ski destinations, the Okanagan, and Vancouver Island.

WHY DO HOTEL STRATAS EXIST?

Historically it has been difficult for hotel developers to get financing. Unlike conventional real estate development where the property is sold or leased, it takes much longer for a hotel development to become profitable. Hotel revenue is also subject to seasonal ebbs and flows and other local or global events that may affect tourism, with the most recent example being the COVID-19 pandemic.

Hotel developers have therefore looked to other means of financing, and strata-titled hotel developments allow a developer to market and sell off individual units in order to fund the property's development as well as share the burden of the hotel's high operating costs once the hotel is up and running.

HOW DO HOTEL STRATAS OPERATE?

Hotel stratas exist pursuant to the *Strata Property Act* and have all the same legal duties as any other strata corporation when it comes to governance. This includes requirements to hold annual general meetings, elect a strata council, and approve an annual operating budget.



Oswego Hotel at 500 Oswego, Victoria (2007). flickr/Jay Cross



The strata corporation contracts with a hotel management company to run its day-to-day hotel operations. The hotel manager will typically be responsible for managing a central booking system for rentals, marketing the hotel, maintaining the property and its amenities, and handling various guest services.

Owners who buy into hotel stratas will be required to enter into their own individual agreement with the hotel manager, often called a "hotel management agreement" or a "rental pool management agreement." These agreements provide for how hotel expenses will be paid and revenue split between the owners and the hotel manager. Usually there is a management agreement put in place at the time of development, but sometimes owners will be asked to sign individual agreements.

Once owners have bought into a hotel strata and entered into a rental pool agreement, they become members of an informal association. The owners' association is a separate entity to the strata corporation but the two often operate in tandem when it comes to holding general meetings, board/council elections, and approving expenses.

Often the municipality in which the hotel is located will require a restrictive covenant to be registered on title to the hotel property at its development stage, to ensure that the development will be operated as hotel accommodation available for public use. Once the property is subdivided into a strata corporation, the covenant remains on title to each strata lot and is binding on all subsequent owners. These covenants are typical in resort communities such as Whistler, where the municipality is concerned with maintaining a certain volume of hotel accommodation to be available for tourists. For an interesting case discussing the enforceability of restrictive covenants, see *585582 B.C. Ltd. v. Anderson*, 2015 BCCA 261, where the restrictive covenant was held void for uncertainty because it did not contain sufficient information about the rental pool management agreement.

ARE THEY RIGHT FOR EVERY INVESTOR?

Prospective purchasers may wonder whether buying into a hotel strata is a good investment. As with most investments, there is no guarantee of profit, and investment income will vary drastically from one hotel to another.



Hotel le Soleil at 567 Hornby Street, Vancouver (2012). flickr/Jeff Hitchcock



Hotel Georgia at 801 West Georgia Street, Vancouver (2019). flickr/Eileen Mak

The Pros

Hotel stratas provide investors with the ability to make passive income without having to deal directly with tenants or occupants or concern themselves with the operational hassles of being a landlord or running a short-term rental business.

Depending on the performance of the hotel, investors may stand to earn higher rental income than they may receive from renting an apartment to a long-term tenant. Since hotel stratas are purpose-built for short-term accommodation, investors don't have to worry about the municipality or the strata introducing any bylaws that would prevent them from using their strata lot for short-term rentals.

Another attractive feature of hotel stratas for investors is the ability to enjoy their unit occasionally as a vacation property. Many hotel stratas allow owners to use their units for a period each year. The owner has the benefit of a ready-to-use vacation property without the hassle and expense of maintaining the property year-round when not in use, or potentially having to pay the Speculation and

Vacancy Tax for leaving a property empty for most of the year.

The Cons

The main disadvantage of investing in a hotel strata is the potential for hotel expenses to eclipse rental revenue. Owners in hotel stratas face high operating costs for hotel management, staffing, and maintenance of expensive hotel amenities (such as pools, saunas, and golf courses).

Hotel stratas have also been notoriously litigious, in part due to their complex structure and interplay between hotel manager, strata corporation, and investors. For example, one boutique hotel in downtown Vancouver has been the subject of well over 30 court proceedings over the past several years.

Often one investor will buy up a majority of units in the hotel and gain majority control of the hotel, leaving minority investors with little decision-making power.

Participation in the hotel rental pool is typically mandatory, even though it may be more lucrative to rent the unit



The Hilton Vancouver Downtown (formerly Westin Grand) at 433 Robson Street, Vancouver (2020). *flickr/GoToVan*

via Airbnb or similar platform where the owner would not have to split the revenue with the hotel manager. Even where owners have the option to rent outside of the rental pool, doing so may be logistically impractical where the hotel manager has exclusive control over essentials like key card access, parking, and laundry.

In terms of long-term value, hotel strata lots tend not to appreciate over time to the same degree as their residential condo counterparts. Owners must also pay GST upon purchasing a unit in a hotel strata and they are taxed on rental revenue.

Owners who hope to enjoy their investment as a vacation property face a high number of restrictions on use. Personal use is often restricted to a certain number of days or weeks per year, and certain dates may be blocked off or unavailable during peak seasons. Units will typically be furnished by the hotel manager with standard hotel furnishings, and there is usually limited ability to renovate or personalize the unit to make it feel more like a vacation home.

THE TAKEAWAY

As with all types of property purchases, buyers must beware and conduct thorough due diligence before investing in a hotel strata.

While hotel stratas may seem like an attractive option at first, with purchase prices often lower than surrounding residential properties, the profitability of a hotel strata is entirely dependent on the hotel being well run and experiencing relatively low conflict.

Prospective buyers should have a lawyer review all relevant documents prior to purchase, including the hotel management agreement or rental pool management agreement, rental pool rules, and any restrictive covenant on title, in addition to standard items like strata bylaws, meeting minutes, and ongoing litigation. This should help the investor avoid any unsavoury surprises and ensure that the buyer has a good understanding of their investment and expected revenue stream.

RI

Real Estate
Division

Creative Adaptable Analytical

Today's successful real estate professional is committed to lifelong learning. UBC's **Professional Development Courses** meet your needs.

Business Development Series:

Eight convenient online courses that offer practical skills to establish and successfully operate a real estate business. Courses are eligible for continuing education credits from the Appraisal Institute of Canada and the British Columbia Real Estate Association.

Course topics include:

- *Entrepreneurship and Business Strategy*
- *Human Resources Management*
- *Succession Planning*
- *Financing a Real Estate Business*
- *Accounting and Taxation*
- *Marketing and Technology*
- *Law and Ethics*

To find out more, visit:

realestate.ubc.ca/CPD

tel: 604.822.2227 / 1.877.775.7733

email: info@realestate.sauder.ubc.ca

UBC SAUDER
SCHOOL OF BUSINESS

RI AWARDS



June 15, 2023, marked an extraordinary in-person event, the RI Awards, which was held at the prestigious Paradox Hotel in Vancouver. The evening was dedicated to celebrating the distinguished individuals who have exemplified exceptional leadership and innovation in the industry. Through their passion, vision, and dedication, these award recipients have made lasting contributions to their industries, inspiring others to strive for excellence and push the boundaries of what is possible.

The highlight of the evening was the presentation of the four awards. The copper and cedarwood medals each had a distinct hand-carved animal or symbol, crafted by Indigenous artist Roxane McCallum. Our congratulations to each Award Finalist and Recipient. Their outstanding contributions and commitment to their practice and profession help shape the future of our industry.

In addition to the RI Awards, a special award was presented to Ian Macnaughton, who marked 60 years as an RI member of the Real Estate Institute of BC. Receiving his Diamond recognition, Mr. Macnaughton was joined on stage by Keith MacLean-Talbot, Cindy Nesselbeck, and Geoff Radtke, representing REIBC Presidents past, present, and future.

To capture the special moments of the evening, a photo booth was set up, allowing guests to take fun and candid pictures with their friends and colleagues. The photo booth provided a lighthearted and entertaining activity, adding an extra element of excitement to the event.

The event served as a platform for networking and fostering collaborations, as industry leaders from diverse backgrounds came together to celebrate excellence. Guests were treated to delicious interactive food stations and tantalizing sips. The special dessert terrace added a touch of indulgence, providing guests with a sweet tooth a sweet haven, and the upbeat sounds of DJ Pri left everyone motivated to push boundaries in their own endeavours.

Thank you to all that attended the RI Awards and were left inspired. A special thanks to our sponsors: FortisBC, Landcor Data Corporation, BC Real Estate Association, Real Estate Foundation of BC, Home Ingredients, and UBC Sauder School of Business – Real Estate Division.

RI AWARD FOR EMERGING LEADER

Damien Roussin, RI - Finalist

Daniel John, RI - Finalist

John McCarthy, RI - Finalist

Troy Abromaitis, RI - Recipient

RI AWARD FOR INGENUITY

Michael Heeney, RI - Finalist

Tiffany Simmons, RI - Finalist

Doug Gilchrist, RI - Recipient

RI AWARD FOR LEADERSHIP

Mandy Hansen, RI - Finalist

Susan Antoniali, RI - Recipient

RI MEDAL OF DISTINCTION

Doug Gilchrist, RI - Finalist

Sandra Cawley, RI - Finalist

Troy Abromaitis, RI - Finalist

William McCarthy, RI - Recipient





RESOLVING STRATA PROPERTY DISPUTES WITH THE CIVIL RESOLUTION TRIBUNAL

J. Garth Cambrey, RI

The Civil Resolution Tribunal (CRT) is an administrative tribunal that forms part of the British Columbia justice system. It started to resolve strata property disputes of any amount in July 2016. Since then, the CRT's jurisdiction has expanded to include small claims disputes of \$5,000 and under; some motor vehicle disputes, including accident benefits; and some society and co-operative association disputes. The CRT will soon resolve disputes under the *Intimate Images Protection Act*, as recently announced by the BC Government.

The CRT is designed to be an online tribunal, so communications are usually through email and hearings are generally conducted by way of written submissions. That means the CRT is generally accessible 24/7, anywhere in the province where there is Internet access. We are continuously working on connecting with people where Internet access is not available.

The *Civil Resolution Tribunal Act* (CRTA), along with rules created by the CRT, formally set out its authority and processes. Its mandate, as set out under Section 2 of the CRTA, is to provide dispute resolution services in a manner that:

- is accessible, speedy, economical, informal, and flexible;
- applies the principles of law and fairness, and recognizes relationships between parties in a strata property dispute will likely continue after the tribunal process is concluded;
- uses electronic communication tools to facilitate resolution of disputes; and
- accommodates, as far as possible, the diversity of circumstances.

The CRT's strata property jurisdiction is set out under CRTA sections 120 through 123.1. The CRT has broad jurisdiction over a claim in respect of the *Strata Property Act* (SPA). This includes the interpretation or application of a regulation, bylaw, or rule under the SPA, common property or common assets of a strata corporation, the use or enjoyment of a strata lot, money owing (including bylaw fines), actions or threatened actions or decisions involving an owner or tenant, and the exercise of voting rights at a general meeting by a person who holds 50% or more of the strata corporation's votes. There is no monetary limit for strata property disputes.

There are also several specific matters for which the CRT does not have jurisdiction. These include things like the forced sale of a strata lot, appointment of an administrator, and some leasehold and phased strata corporation matters.

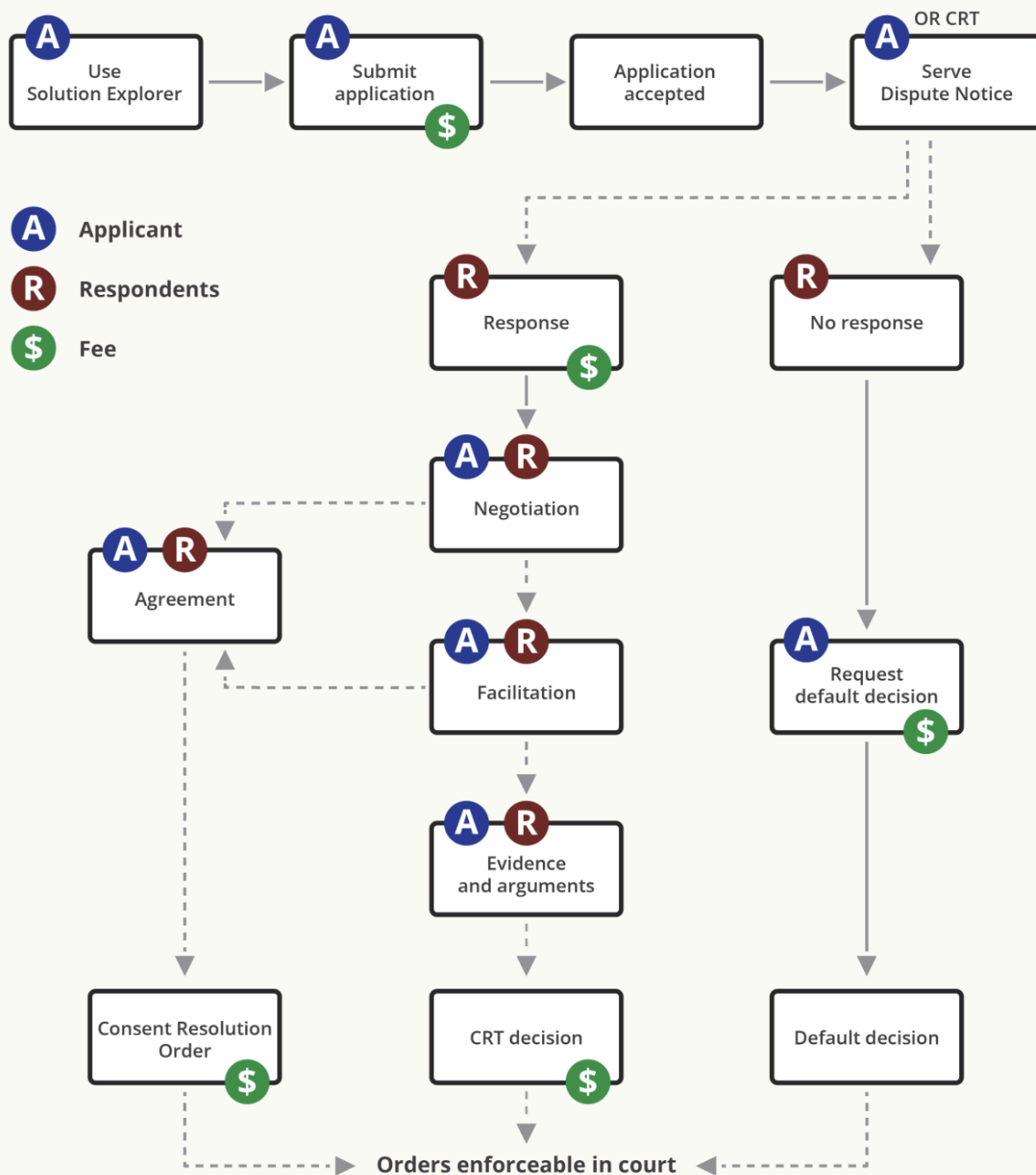
THE PROCESS

The SPA permits an owner, tenant, strata corporation, or separate section of a strata corporation to apply to the CRT for dispute resolution. Generally speaking, an owner or tenant must first request a strata council hearing before making their CRT application.

To make a CRT application, the applicant must first go to the CRT's Solution Explorer. Access to the Solution Explorer is through the CRT's website at www.civilresolutionbc.ca. The Solution Explorer is an online platform that guides a user through a series of questions to determine if a CRT claim can be made. There are several resources available and free legal information in Solution Explorer to assist applicants in trying to resolve their disputes.

Very simply, the CRT model for dispute resolution involves a two-step process after an application is accepted. The parties are first encouraged to negotiate a resolution to their dispute or reach resolution through

THE CRT PROCESS



facilitated settlement discussions assisted by a CRT case manager. Much of the CRT's resources are focused on early resolution of disputes. However, if facilitated resolution is not possible, the parties can request a binding decision of the CRT through its adjudicative process. CRT staff assist parties to prepare their arguments and evidence to be presented to a tribunal member for a binding decision.

Once a CRT decision is issued, the CRT cannot change its decision or order. If a party feels a decision is incorrect, the only avenue available to them is to seek judicial review of the decision through the BC Supreme Court. The option to appeal a CRT strata property decision was removed from the CRTA in January 2019.

HOW IT WORKS

The CRT is continually reviewing and refining its processes based on changes in legislation and decisions of the Court. As a result of the CRT's seven years of strata property dispute resolution, it has become evident that there are a number of things it can and cannot do. The following list is intended to help with understanding the CRT's ability to assist parties with a strata property claim (other CRT jurisdictions may have slightly different rules).

- The CRT cannot provide legal advice. Parties must do their own research or rely on legal counsel for legal advice. If parties can't afford a lawyer, they may wish to review the Access Pro Bono website or Clicklaw's HelpMap for assistance. The Condominium Home Owners Association or Vancouver Island Strata Owners Association may also be able to answer strata questions, although they are unlikely to provide legal advice. Additionally, parties can obtain legal information by using the CRT's Solution Explorer.
- The CRTA requires that parties represent themselves, except if the party is a child or a person with impaired mental capacity or if the CRT, in the interests of justice and fairness, permits a party to have another person represent them. That person can be a lawyer. If a person or strata corporation is allowed to have legal representation, it does not mean that party will be successful in the dispute.
- Any party can have someone help them with their dispute, provided the helper will not be a witness or directly gain or lose based on the outcome of the dispute. There is no need to have the tribunal's permission to have a helper. A helper can prepare documents, assemble evidence, and assist in other ways but cannot communicate to the CRT or receive communications from the CRT on a party's behalf. Also, a helper may be a lawyer.
- The CRT can't predict the outcome of the process or what a decision might be in specific circumstances. There is a database of decisions on the CRT website that is free to access. The decisions are fully searchable and can provide assistance to parties by identifying outcomes in related circumstances.
- The CRT cannot guarantee timelines for completion of the facilitation or adjudication processes. Though its mandate requires that the CRT provide its services as quickly as possible, there are factors such as non-compliance and complexity that are outside the tribunal's control. The CRT cannot guarantee that decisions will be issued by specific deadlines, such as an AGM meeting date, especially if the application is made within a month or two of the scheduled AGM. However, parties are given an expected date for their decision, which may change due to extenuating circumstances.
- The facilitation or case management process doesn't stop because a party goes on vacation or because a permitted representative is unavailable. The CRT's mandate is, in part, speedy dispute resolution, and the CRT sets the process and timelines in order to fulfill this mandate. The CRT is flexible with respect to accommodating parties, within reason, and will certainly consider exceptional circumstances if they apply.
- Evidence isn't always needed during settlement discussions. Sometimes the case manager will request that parties exchange evidence during facilitation and sometimes parties will send evidence to each other to assist in settlement discussions. Evidence exchanged during settlement discussions is not necessarily confidential. Discussions, negotiations, and other communications made for the purposes of attempting to settle disputes or claims are confidential and are not generally provided to the tribunal member if a binding decision becomes necessary.
- Under the CRTA, a case manager during the facilitation stage can provide a non-binding neutral evaluation on their own initiative or if requested by a party. Such an evaluation can be provided to one or all parties and is covered by the confidentiality and non-disclosure rules. The intent of providing a neutral non-binding evaluation is to assist the parties in settling the dispute and does not mean a case manager is biased or is suggesting a party will be unsuccessful. Parties should consider such an evaluation and should not be offended by the frankness of the case manager.
- If a party is abusive in the course of pursuing or defending a claim, the case manager has authority to intervene. However, if a party expresses an

opinion about the dispute that isn't contrary to the CRTA or rules, the CRT will not intervene.

- Given the CRT is primarily an online tribunal, hearings are generally conducted by way of written submissions provided by email. Only in circumstances where, at a tribunal member's discretion, an oral hearing is necessary will one be conducted. Such circumstances may include complex disputes or where credibility of a party is an issue. Even then, the tribunal member may determine that a telephone or video hearing, rather than an in-person hearing, may be sufficient for part of a hearing, with the balance of the hearing being conducted by written submissions. The vast majority of hearings conducted to date have been by written submissions.
- While the CRTA permits the CRT to order a party not to do something in strata property disputes, the CRT will generally not order preliminary injunctive relief while the dispute goes through the tribunal process. In other words, The CRT will issue its decision after the parties have completed the facilitation process and provided their submissions. For example, the CRT will not order the strata to stop imposing fines during the dispute resolution process because an owner is disputing them or the bylaw on which the fines were based.

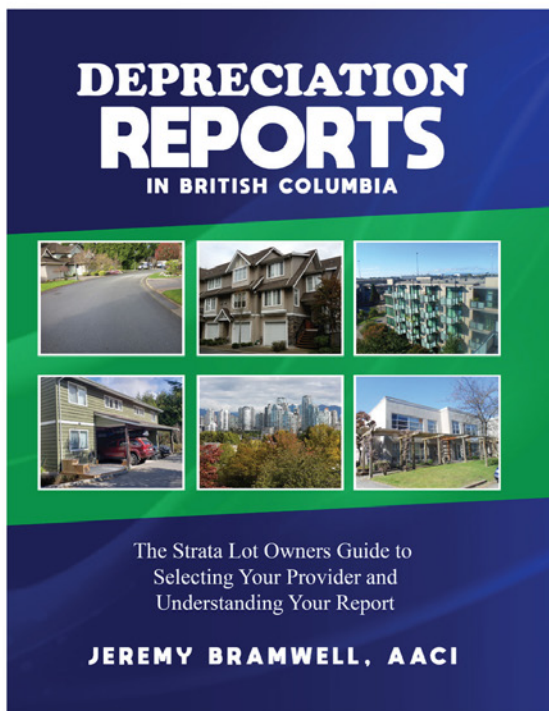
- The CRT can't enforce its orders. Parties must go to the BC Supreme Court, or the BC Provincial Court in certain circumstances, to enforce CRT orders.
- The CRT doesn't provide ongoing support after a decision is issued. Once a decision is issued by the CRT, the tribunal does not have the jurisdiction to change its decision, aside from correcting typographical errors or clarifying the decision. Further, parties cannot contact tribunal members directly, just as parties cannot contact a judge following a court decision.

CURRENT STATISTICS

Between July 16, 2016, and March 31, 2023, the Solution Explorer was used 55,887 times for strata property disputes. During the same period, the CRT accepted 5,184 strata property dispute applications. This has resulted in 2,133 withdrawals or resolutions by agreement and 2,278 binding decisions, including 393 by default. Based on these statistics, and the additional jurisdiction given to the CRT since its inception, it is safe to say the CRT is largely considered a success.

RI

The Definitive Book on Depreciation Reports



Depreciation Reports in British Columbia

The Strata Lot Owners Guide to
Selecting Your Provider and
Understanding Your Report

**Get The Book BEFORE You
Order a Depreciation Report**

Available at Amazon.ca,
StrataReservePlanning.com
and selected bookstores.

ISBN: 9781738849000

ASK A LAWYER

METHODS AND FINDINGS OF STRATA DISPUTE RESOLUTIONS

John McLachlan, RI, LLB, and Andy Lee, JD

For homebuyers, strata properties are an attractive option due to their harmonization of individual home ownership and shared communal responsibilities. Stratas offer the benefit of private living spaces and collective decision making.

For collective decision making, a strata council is elected to help run the strata corporation. However, strata owners may not necessarily agree with the strata council's decisions. This begs the question: How does one resolve these disagreements? This brings to the forefront the importance of a strata's dispute resolution methods.

This article will briefly highlight the Civil Resolution Tribunal's specialized expertise for strata matters, describe important sections for an owner to know about in the *Strata Property Act*, SBC 1998, c. 43 (SPA), and discuss decisions dealing with strata bylaws and conflicts regarding the costs of repairs to common strata property.

As a preliminary note, strata disputes can be resolved within the strata corporation, through the Civil Resolution Tribunal (CRT), by going to court, or through arbitration.

THE CIVIL RESOLUTION TRIBUNAL'S SPECIALIZED EXPERTISE

The *Civil Resolution Tribunal Act*, SBC 2012, c. 25 (CRTA) holds that the CRT has specialized expertise over some strata property claims. Specialized expertise is defined in section 1 of the CRTA to mean "expertise that the tribunal is considered to have in respect of certain claims." The CRT has specialized expertise over these claims:

- (a) the interpretation or application of the *Strata Property Act* or a regulation, bylaw, or rule under that Act;
- (b) the common property or common assets of a strata corporation;

(c) the use or enjoyment of a strata lot;

(d) money owing, including money owing as a fine, under the *Strata Property Act*, or a regulation, bylaw, or rule under that Act;

(e) an action or threatened action by a strata corporation, including the council, in relation to an owner or tenant;

(f) a decision of a strata corporation, including the council, in relation to an owner or tenant;

(g) 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.

Section 16.1(1)(b) of the CRTA says that, subject to subsection (2) and section 16.4(1) and (2), if in a court proceeding the court determines that all matters are within the jurisdiction of the tribunal, the court must dismiss the proceeding, unless it is not in the interests of justice and fairness for the tribunal to adjudicate the claim.

Section 16.3(1) of the CRTA lists out factors to consider to determine whether it is in the interest of justice for the CRT to adjudicate the claim. These factors are:

- (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;



istock/Jovanmandic

(d) whether all of the parties to the claim or dispute agree that the claim or dispute should not 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.

Consequently, strata claims that fall under these matters may go through the CRT. If leave to appeal is granted, the matter would be appealed to the Supreme Court of British Columbia (BCSC) for judicial review.

THE STRATA PROPERTY ACT

A strata owner has rights and remedies under the SPA. A strata owner may assign their rights to a tenant. Section 35(1) of the SPA requires that a strata keep copies of records that include annual and special general meetings, a list of council members, a list of owners, mortgagees, tenants, and assignments of voting or other rights by

landlords under sections 147 and 148 of the SPA, and books of account showing money received and spent and the reason for the expenditure.

Section 36 of the SPA allows a strata owner or tenant who has been assigned a landlord's right, or anyone authorized by the owner or tenant in writing, to inspect and obtain copies of the records and documents mentioned in Section 35 of the SPA.

Section 72 of the SPA requires that a strata has a statutory duty to repair and maintain common property.

Section 121(1)(a) holds that a strata bylaw is unenforceable if it contravenes the SPA, regulations, the *Human Rights Code*, or any other enactment of law.

Pursuant to Section 163 of the SPA, the strata corporation can be sued as a representative of the owners regarding common property, common assets, bylaws or rules, or an act or omission of the strata corporation.

Section 164 of the SPA allows an owner or tenant to apply to the Supreme Court for an interim or final order to prevent or remedy a significantly unfair action or threatened

action by the strata corporation and strata council in relation to the owner or tenant.

Section 165 of the SPA allows an owner or tenant, mortgagee of a strata lot, or interested person to obtain an order from the Supreme Court to (a) order the strata corporation to perform a duty it is required to under the SPA, bylaws, or the rules, or (b) order a strata corporation to stop contravening the SPA, regulations, bylaws, or the rules. The Supreme Court can make any order necessary to give effect to 165(a) or 165(b).

CHALLENGING STRATA BYLAWS

In *The Owners, Strata Plan BCS 435 v. Wong*, 2020 BCSC 1972 (*Wong*), the matter concerned two joint owners (the Wongs) who were challenging a strata bylaw. The bylaw required all overnight guests to complete a temporary resident information form (the Form). The crux of the conflict was that any visitor was required to sign the Form and this entailed having their photo identification photocopied.

The Wongs were fined when their guests refused to allow their photo identification to be photocopied. The Wongs were fined a total of \$350 for three separate infractions.

The Wongs filed a claim with the CRT, where they alleged that the bylaw was unenforceable because it contravened section 11 of the *Personal Information Protection Act*, SBC 2003, c. 63 (PIPA). Section 11 of PIPA holds that an organization may only collect personal information for purposes that a reasonable person would consider appropriate in the circumstances.

One of the issues concerned jurisdiction—the strata argued that the Information and Privacy Commissioner (IPC) was a more appropriate body to adjudicate the dispute.

Another issue was that the strata kept personal information indefinitely and there was no policy for deleting the Form.

The strata argued that personal information was collected for two reasons: 1) to enforce its prohibition against short-term rentals, and 2) to ensure the safety and security of the strata.

At the CRT, the tribunal member found that the IPC was not a more appropriate forum to adjudicate the dispute because the IPC did not have jurisdiction for the Wongs' fines.

The tribunal member found for the Wongs and held that the bylaw was unenforceable because a reasonable

person would not consider photocopying each guest's photo identification to be appropriate. The tribunal member found that an honest short-term renter would provide the concierge with sufficient information to permit enforcement of the short-term rental bylaw and that there was no benefit to collecting and retaining personal information.

Regarding the issue of safety and security of the strata, the tribunal found that these arguments were based on hypotheticals. The strata could not prove that they had issues with fraud. The tribunal member highlighted that the strata did not try less intrusive means of enforcing its bylaws.

The tribunal member cautioned that *Wong* does not mean that a strata can never pass a PIPA-compliant bylaw that includes collecting personal information of overnight guests or short-term renters. *Wong* was based on its particular facts.

On judicial review to the BCSC, the Court held that the CRT had jurisdiction over the matter because Section 121(1)(a) of the SPA allows the tribunal to apply PIPA to determine if a bylaw is unenforceable. The court upheld the CRT decision.

In *Wadler v. The Owners, Strata Plan VR 495*, 2021 BCCRT 748 (*Wadler*), a portion of the decision concerned the strata seeking to enforce a bylaw fine against the applicant for late payment of a special levy, plus interest. The relevant bylaw was bylaw 2.6, which said that a \$50 fine would be imposed for late special levy payments. The strata fined the owner without giving them any opportunity to answer the complaint. The tribunal held that Section 135 of the SPA required that a strata give an owner or tenant particulars of the complaint in writing and a reasonable opportunity to answer the complaint. The tribunal held that bylaw 2.6 contravened Section 135 of the SPA and that to the extent that bylaw 2.6 was inconsistent with Section 135 of the SPA, bylaw 2.6 was unenforceable.

In *Renaud v. The Owners, Strata Plan 38*, 2020 BCCRT 815 (*Renaud*), one of the issues in the complaint concerned bylaw 38(11), which said that correspondence to the strata shall be delivered by registered mail, unless the parties agreed to accept email. This was problematic because Section 63 of the SPA allowed for notice to a strata corporation to be given various means that included leaving the notice with a council member, emailing or faxing the notice to the strata corporation's email address or fax number, or by putting the notice into the strata corporation's mailbox. As bylaw 38(11) contravened Section 63 of the SPA, the tribunal held that bylaw 38(11) was unenforceable.



istock/ SPmemory

In *Simpson v. The Owners, Strata Plan BCS 3591 (Simpson)*, one of the issues concerned bylaw 48.8, which said:

A resident must not install, use or permit to be installed or used any surveillance measures (such as video surveillance) or any video cameras on the common property, common assets, or in a strata lot where such measures will or may capture any personal information about another resident or visitor.

The applicant attempted to challenge this bylaw on various grounds. The applicant argued that bylaw 48.8 was unconstitutional, but the tribunal referred to prior decisions and held that the *Canadian Charter of Rights and Freedoms* applied to governments and not a strata corporation. The applicant further argued that bylaw 48.8 was unenforceable due to Section 121 of the SPA. The applicant did not refer to any law that the bylaw contravened. As a result, the tribunal held that bylaw 48.8 was a valid bylaw.

REPAIR COSTS TO COMMON PROPERTY

Slosar v. The Owners, Strata Plan KAS 2846, 2021 BCSC 1174 (Slosar), concerned an owner (Slosar) who filed a claim against their strata for negligence. The owner's claim alleged that the strata was negligent in how it

handled common property maintenance and repair issues before and during ownership of Slosar's strata unit. In *Slosar*, the common property of the strata included overpasses, bridges, and walkways that were constructed using wooden beams (the "common property"). The strata retained an engineering firm, which recommended various repairs to the common property. The strata commissioned remediation work in accordance with these recommendations.

Nonetheless, the strata had ongoing concerns with the common property and retained a structural engineering firm to examine the common property. The structural engineering firm provided a report that recommended the replacement of all wooden beams in the common property. The repair was estimated to cost \$3,575,000 (the "repair cost").

At a special meeting of the strata, the majority of strata owners voted to approve special levies to finance the repair cost. Slosar voted against the levy, but nonetheless paid his proportionate share of the repair cost.

Slosar began researching the common property issue and discovered that the issue was potentially known by the strata since 2006. Slosar took the position that if the strata acted earlier, repairing the common property

would have cost less. Slosar filed a claim against the strata for the tort of negligence. The tort of negligence is defined as conduct that falls below the standard required by society.

At the CRT, the tribunal member found in favour of the strata. The tribunal member applied the test of negligence. The test for negligence involves a duty of care, the breach of a standard of care, and damage that was caused by the breach of the standard of care.

The tribunal member found that the strata owed Slosar a duty of care, although the tribunal member disagreed that the strata owed Slosar a duty of care before becoming an owner. The tribunal member held that the strata did not breach its standard of care owed to Slosar because the strata was continuously monitoring the common property and was relying on advice from professionals and contractors. The strata did not fail in its statutory duty to repair the common property issue.

On appeal to the BCSC, the Court upheld the tribunal member's decision. The Court held that the standard for a strata council is reasonableness, not perfection. This is because strata councils are made up of lay volunteers and mistakes and missteps will occur. The Court determined that the strata council retained professionals and

received recommendations and took the course of action it deemed appropriate. Based on the circumstances at the time the strata made its decision, the decisions were reasonable. The Court determined that even if the strata did breach its duty of care, Slosar could not prove damages resulting from the breach.

CONCLUSION

These cases affirm an owner's rights to seek recourse through the courts. In *Wong*, the bylaw pertaining to the collection of personal information was not warranted, and it provides us with the idea that a strata should try less privacy-intrusive methods of enforcing its bylaws. *Wong* also provides a warning that it is not a guarantee that any bylaw with respect to collecting personal information will be struck down.

Renaud, Wadler, Wong, and Simpson show us that to contest a bylaw, an applicant must be able to point to some enactment of law that is contravened by the bylaw.

In *Slosar*, we see that in the context of repairs to common strata property, the standard for strata councils is not perfection but what was reasonable in the circumstances at the time the action was taken.

RI



SAVE the DATE

May 8-10, 2024

in Nanaimo, BC

www.bclandsummit.com

ORGANIZATION PROFILE

VISOA MARKS 50 YEARS OF HELPING STRATA OWNERS



The Vancouver Island Strata Owners Association is the oldest organization of its kind in Canada. In the 1960s, strata properties presented a new form of ownership with the first strata plan on Vancouver Island filed in Port Alice in 1968. The Greater Victoria Association of Strata Owners was founded in 1973 with the mission of helping strata owners understand legislation and manage their properties. While its name changed several times—becoming the Vancouver Island Strata Owners Association (VISOA) in 1998—its purpose has remained the same: providing education, support, and advocacy for owners of condo, townhouse, bare land, and commercial strata units. In the 2000s, VISOA expanded its services to assist strata owners and councils across British Columbia through digital communication.

Strata living presents many challenges. The need for reliable information, education, and support is greater now than ever before. The legal framework and management of strata corporations has become more complicated with bare land, mixed-use, sectioned, and air-parcel stratas as well as increasingly complex legislation.

BC has far more strata councils to educate than condominium boards in other provinces. While Ontario has 19% more units, BC has 269% more corporations. As of March 31, 2023, the Condominium Authority of Ontario reported more than 12,000 corporations and 825,000 units, while the Land Title and Survey Authority of BC reported 32,344 filed strata plans and 690,980 active strata lots. This is due to the fact that more than 50% of the strata corporations in BC are two to four units in size. The number of small stratas will increase significantly in the coming years due to the BC Government's new Housing for People plan. Traditional single-family detached lots across BC will be rezoned to allow construction of small-scale, multi-unit housing developments such as duplexes and triplexes.

This adds up to a growing need for education, particularly for strata council members. Whether two units or 200 units, strata corporations must comply with the *Strata*



Property Act, Personal Information Protection Act, Human Rights Code, and other legislation. For owners with busy lives and little knowledge or experience, it can be overwhelming. There aren't enough strata managers to fill the need. It is estimated that fewer than 20% of stratas have professional management to help volunteer council members fulfill their statutory obligations.

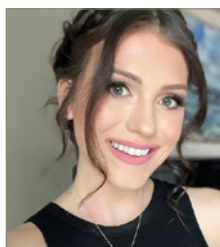
Wendy Wall, the president of VISOA, explains that the society is driven by volunteers. "For 50 years we've been strata owners helping strata owners. This isn't a paycheque for us. We're volunteers who understand how challenging strata living can be. Education and accurate information can help strata owners resolve problems, mitigate conflict, and feel happier in their homes."

"Our Strata Support Team is the heart and soul of VISOA, answering over 1,000 questions per year. Our members are so grateful and often remark that they couldn't have managed through their situation without the knowledge and support of our dedicated volunteers."

Learn more about VISOA's education, publications, and advocacy at visoa.bc.ca and on YouTube/VISOAvideos.

NEW MEMBERS

PROFESSIONAL MEMBERS



Ashley
Black-Harden, RI
BC Assessment



Jordan Boers, RI
Normac Appraisals



Sara Carley, RI
BC Assessment



Kevin Poon, RI
BC Assessment



Celia Yeung, RI
BC Hydro

REIBC MEMBERSHIP

Whether you have years of career experience or are new to the industry, REIBC is your key to career advancement and to connecting with the real estate industry.

>> Professional members have achieved the RI designation, which provides employers and clients with instant confirmation of advanced levels of education and experience.

>> Nominee members are working towards designation by completing education and/or experience requirements. Students enrolled in an REIBC-recognized real estate program can be Nominee members.

>> Associate members have an interest in real estate but do not qualify for Professional or Nominee membership.

RI

Need a real estate professional?

Hire an RI.



A designated,
educated,
experienced, and
connected
real estate
professional.

Find one at
reibc.org

RI

DIRECTORY

Email us at marketing@reibc.org to place your ad today.



BFL CANADA Realty Insurance Services Inc.
The leading insurance broker for the real estate sector.
bflcanada.ca
realestate@bflcanada.ca
1-604-669-9600



Building Owners and Managers Association of BC
BOMA BC is the principal voice for the commercial real estate industry, providing advocacy, leadership, knowledge, and networking events since 1911.

Be Seen. Be Heard. Be Effective.
boma.bc.ca,
bomabc@boma.bc.ca, 1-604-684-3916



Campbell & Pound Commercial Ltd.
Celebrating our 84th year! Commercial, Industrial and Residential. Appraisers since 1939 serving Greater Vancouver, Sea-to-Sky, and Fraser Valley out to Chilliwack. Point-in-time Valuations, Litigations, Insurance Reports, Market Value, Estates, Will Probate, and expert court testimony. A+ Accredited Platinum Members of BBB.
campbell-pound.com
1-877-782-5838 (toll free)



Collingwood Appraisals Ltd.
Expert Testimony – Valuation – Depreciation Reports – RCN Reports. Experience, competence, and reliability you can count on.
collingwood.com
appraisers@collingwood.com
1-604-526-5000



Dorset Realty Group
We are a full-service real estate brokerage specializing in commercial and residential property management, leasing and sales. Our accredited and experienced professionals have been helping the community since 1975.
dorsetrealty.com
damienroussin@dorsetrealty.com
1-604-270-1711 ext. 143



Home Inspectors Association BC
HIABC is a not-for-profit association of Home Inspectors with over 325 inspector members in BC, recognized since 1992 as the leader in the advancement of professional home inspectors. Ensure your home inspector is a member of HIABC.
hiabc.ca
diane@hiabc.ca
1-800-610-5665



LINDSAY & ASSOCIATES
Ian Lindsay, PREC, is qualified for the Senior Real Estate Specialist (SRES®) designation. Residential, senior living, commercial, investment and project development are all part of the team's extensive real estate background. For strategic advice, planning, acquisition and marketing in central Vancouver Island, please give us a call.
ianlindsay.ca
info@ianlindsay.ca, 1-250-951-6531



NLD Consulting - Reserve Fund Advisors
Are you preparing for your strata's Depreciation Report? Contact BC's largest team of Certified Reserve Planners (CRPs) for a no-cost, no-obligation proposal today!
reserveadvisors.ca
info@reserveadvisors.ca
1-604-638-1041



Pacific Mortgage Brokers
Your mortgage matters. It's in your best interest.
bradcurrie.com
brad@bradcurrie.com
1-604-727-6111



Power Strata Systems Inc.
PowerStrata is a comprehensive, secure, easy-to-use and cost effective strata management software, specifically designed for managing BC strata corporations of any size and complexity in a more effective and efficient way. We developed PowerStrata to help create better and stronger strata communities across BC.
powerstrata.com
info@powerstrata.com, 1-604-971-5435

HELP US, HELP YOU

Advertising in *Input* helps us continue to provide industry-leading content and helps you reach professionals in the real estate industry.

Email marketing@reibc.org for more information or to advertise.

marketing@reibc.org

YOUR AD HERE!

Contact 1-604-685-3702 ext. 104,
or email us at marketing@reibc.org



REIBC ProSeries

LEARN FROM EXPERIENCE

reibc.org/ProSeries

RETURN TO SENDER:

REIBC
1750-355 Burrard Street
Vancouver, BC V6C 2G8

