



BILL 8 – *THE STRATA PROPERTY AMENDMENT ACT* (B.C.), 2009

October 2009

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Bill 8, the *Strata Property Amendment Act*, 2009, received first reading in the British Columbia Legislature on September 21, 2009.

Bill 8 amends the *Strata Property Act* in most respects identically to Bill 12 (a bill with the same name introduced last spring, which died on the order paper when the Legislature was dissolved for the 2009 election).

This publication describes the main features of Bill 8.

1. DISPUTE RESOLUTION

(a) Expanded Role for Provincial Court. Strata Corporations and owners will be able to choose between Provincial Court (i.e. Small Claims Court) and Supreme Court for most disputes. Only an application for an administrator under s. 174 will remain outside the Provincial Court's jurisdiction. The specific areas in which Provincial Court will be given jurisdiction are:

- to remedy a council member's conflict of interest under s. 33;
- to deem a unanimous vote to have been passed based on 95% support under s. 52;
- to appoint a voter for a strata lot under s. 58;
- to enforce a Form B certificate against the strata corporation or to relieve the strata corporation from the consequences of an inaccurate Form B under s. 59;
- to remedy a significantly unfair action under s. 164 by the strata corporation or by the holder of more than 50% of the votes;
- to order a strata corporation, an owner or a tenant to perform a duty or abide by the Act or the bylaws under s. 165 and s. 173.

It is not clear how the Provincial Court's mandatory mediation and settlement conference process will apply to conflicts of interest, unanimous votes, court appointed voters or enforcement of Form B certificates. Supreme Court may remain the preferable route for these types of issues, especially if speed is a factor.

(b) Mandatory mediation and arbitration. The Provincial Cabinet will have authority (ss. 30 and 34, Bill 8) to establish mandatory mediation and arbitration procedures by regulation. Most of the arbitration provisions of the existing *Act* will be repealed, to be replaced by new regulations adopted by the Cabinet. The regulations may make mediation mandatory for all or some disputes referred to arbitration under the existing s. 177. Until we see the regulations, it is impossible to determine what types of disputes the government envisions submitting to mandatory mediation or what the effect will be.

(c) Voluntary dispute resolution. The provincial Cabinet will be given authority (s. 33(c), Bill 8) to adopt regulations requiring strata corporations to establish voluntary dispute resolution processes. Few strata corporations currently have voluntary dispute resolution processes, despite a provision in s. 24 of the *Act* permitting them. The amendment suggests that such committees will become mandatory in the future.

2. FINANCES

(a) Mandatory depreciation reports. Depreciation reports under s. 94 of the *Act* will become mandatory, unless overridden by a $\frac{3}{4}$ vote resolution at a general meeting (s. 15, Bill 8). The interval between reports will be established by regulation, and any waiver will have to be renewed for each period. It will also be mandatory for a depreciation report to be prepared by a “qualified person” to be defined in forthcoming regulations, and to contain specific types of information also specified in the regulations.

The forthcoming regulations may exempt certain classes of strata corporations from the requirement (very small strata corporations, bare land strata corporations, and strata corporations where no units have ever been sold come to mind). It remains to be seen whether the regulations will tie contingency fund contributions directly to the depreciation report, or leave that to be decided by the owners, as is now the case.

(b) Mandatory audits. Audited financial statements will be mandatory under amendments to s. 103 of the *Act*, unless overridden by a $\frac{3}{4}$ vote resolution on a periodic basis (s. 16, Bill 8). Forthcoming regulations may exempt certain classes of strata corporations from the audit requirement.

3. SPECIAL LEVIES

(a) Segregation and repayment of funds. Special levy funds will be required under amendments to s. 108 of the *Act* to be accounted for separately from the operating fund and contingency reserve fund (s. 17, Bill 8), and interest will be permitted on overdue special levies, either by a bylaw provision or in the actual resolution. Excess special levy funds greater than \$100 per owner will be required to be repaid to the current owners (s. 17, Bill 8). This eliminates an ambiguity in the existing provision which was sometimes interpreted as requiring repayment to an owner who had sold in the meantime.

(b) Court imposed special levy. A new provision (s. 25, Bill 8) will be added to s. 173 of the *Act* permitting a strata corporation to apply to court (being either B.C. Supreme Court or Provincial Court) for approval of a special levy if the levy receives majority support at a general meeting but not enough to pass a $\frac{3}{4}$ vote. The provision will only apply if the funds are required for maintenance or repairs necessary to ensure safety or prevent significant loss or damage. This is the same test that applies to emergency expenditures by the council under s. 98.

4. ADMINISTRATOR'S POWERS

Section 174 of the *Act* will be amended (s. 26, Bill 8) to give the court clear authority to exempt a court-appointed administrator from a requirement to obtain approval from the owners if that approval would normally be required (such as a $\frac{3}{4}$ vote to approve a special levy for building repairs).

5. COMMUNICATIONS BY E-MAIL

Notices given by and to the strata corporation will be legally effective where sent by e-mail (s. 13 and 14, Bill 8). In the case of notices to owners and tenants, s. 61 of the *Act* will be amended to permit notice to an email address provided by the person. In the case of notices to the strata corporation, s. 63 will be amended to permit notices to be e-mailed to “the strata corporation’s e-mail address” or to an e-mail address provided by a council member. An e-mail notice will be deemed to have been given four days after it is e-mailed; there is no requirement for evidence of receipt.

Legal service on a strata corporation must still be carried out by personal service on a council member or registered mail to the mailing address on record at LTO.

There is no provision to establish a strata corporation’s e-mail address. The Forms X and D, filed in the Land Title Office, may need to be amended to include a line for an email address.

6. GOVERNANCE

(a) Conflicts of interest. The scope of council members’ conflicts of interest that must be disclosed under s. 32 will be expanded (s. 4, Bill 8) beyond transactions with the strata corporation, to include all

matters in which a member has an interest that could result in a conflict with his/her duties as a council member.

(b) Council hearings. The provisions of the *Act* giving an owner or tenant the right to request a council hearing, formerly set out in section 15 of the Standard Bylaws, will be moved (ss. 6 and 35, Bill 8) to the *Act* as s. 34.1. This will prevent a strata corporation from repealing these rights by amending the bylaws.

(c) Requisitions by owners. The threshold for owners to requisition a general meeting under s. 43 of the *Act* or to place a resolution on the agenda of a general meeting under s. 46 will be reduced from 25% of owners to 20% (s. 9, Bill 8).

(d) Direction of council. The power of the owners under s. 27 of the *Act* to direct or restrict the strata council will be circumscribed (s. 3, Bill 8) by preventing a s. 27 resolution from directing the council with respect to whether a person is required to pay the costs of remedying a contravention of the bylaws under s. 133, or whether an owner is exempted from a rental restriction bylaw for hardship under s. 144.

7. BYLAWS

(a) Age bylaws. Section 123 of the *Act* will be amended to expressly permit age bylaws that might otherwise offend the *Human Rights Code* (s. 18, Bill 8).

(b) Restriction on amendments in new strata corporation. The period during which amendments to the bylaws of a new strata corporation are restricted will be amended under Section 127 of the *Act* to end at the second AGM instead of the first AGM (s. 20, Bill 8). Fully non-residential strata plans and non-residential sections continue to be exempt from the restriction.

(c) Filing requirements. The requirement for bylaw amendments to be filed in the Land Title Office within 60 days will be removed from s. 128 of the *Act* (s. 21, Bill 8). Bylaw amendments will remain ineffective until filed. This removes the ambiguity in the existing provision, which was unclear about whether amendments could be filed later than 60 days after adoption.

8. RENTAL RESTRICTIONS

(a) Cap on rentals. Section 142 of the *Act* will be amended (s. 22, Bill 8) to clarify that a strata lot rented to an owner's family member or under a hardship exemption does not count as a rented strata lot for purposes of a bylaw that caps the number or percentage of rentals.

(b) Deferred application of rental restriction bylaws. Section 143 of the *Act* will be amended (s. 23, Bill 8) to make a rental restriction bylaw passed by the owner developer before the first conveyance effective immediately regardless of whether the developer filed a rental disclosure statement; and to clarify that a rental disclosure statement protects the right of the first owner other than the owner developer to rent, even where that owner purchased under an assigned purchase and sale agreement. The existing provision is ambiguous on this point.

(c) Hardship exemptions. Section 144 of the *Act* will be amended (s. 24, Bill 8) to extend the period for holding a hearing with respect to a hardship exemption from three weeks to four weeks. It will also be amended to provide that the exemption is granted automatically if the owner requests a hearing and the strata corporation fails to hold the hearing within the four-week period. The current provisions for deemed approval remain: if a hearing is held but the council fails to give a written decision within one week; if no hearing is requested and the council fails to give a written decision within two weeks. The current provisions are silent on what happens if a hearing is requested but not held.

(d) Developer's rental disclosure statement. The rules on expiry of a developers' rental disclosure statement under section 143(2) have been simplified. A rental disclosure statement will now apply to every owner of the strata unit until the period set out in the disclosure expires, regardless of any strata corporation bylaw restricting rentals.

9. INFORMATION AND RECORDS

(a) Additional records to be kept. The list of documents that must be retained by a strata corporation under s. 35 of the *Act* will be expanded to include auditors' reports, depreciation reports and reports on repair or maintenance of major items (s. 7, Bill 8). The length of time for which such reports must be retained will be specified in the *Strata Property Regulation* and is not yet determined.

(b) Rights of former owners and tenants. Former owners and tenants will have the right under s. 36 of the *Act* (s. 8, Bill 8) to obtain documents and records from a strata corporation that relate to the period during which they were owners and tenants.

(c) Information for prospective purchasers. A Form B certificate under s. 59 of the *Act* will be required to include information on parking stalls and storage lockers allocated to a strata lot, and the most recent depreciation report obtained by the strata corporation (s. 12, Bill 8). It is not clear whether or how strata corporations should provide information on parking where the developer has taken control of parking by way of a registered or unregistered lease.

10. LEASEHOLD STRATA PLANS

Section 216 of the *Act* is amended to provide that on conversion of a leasehold strata plan to freehold, any occupancy restrictions filed under s. 206 of the *Act* cease to apply.

MILLER THOMSON B.C. STRATA PROPERTY GROUP

For more information, please contact:

Lynn Ramsay lramsay@millerthomson.com
Michael Walker mwalker@millerthomson.com
Sharon MacMillan smacmillan@millerthomson.com

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