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

January 2010

Bill 8, the *Strata Property Amendment Act*, 2009, received third reading in the British Columbia Legislature on October 6, 2009. Effective January 1, 2010, certain sections of Bill 8 came into force, amending the *Strata Property Act*.

Note: This publication is provided as an information service to our clients and is a summary of current legal issues. This article is not meant as a legal opinion and readers are cautioned not to act on the information provided without seeking specific legal advice with respect to their unique circumstances.

FEATURES OF BILL 8 THAT ARE NOW IN FORCE:

1. SPECIAL LEVIES

Segregation and repayment of funds. Special levy funds are now 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 are now 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.

2. ADMINISTRATOR'S POWERS

Section 174 of the *Act* is 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).

3. COMMUNICATIONS BY E-MAIL

Notices given by and to the strata corporation may 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* has been amended to permit notice to an email address provided by the person. In the case of notices to the strata corporation, s. 63 has been 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 is 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.

4. GOVERNANCE

(a) Conflicts of interest. The scope of council members' conflicts of interest that must be disclosed under s. 32 has been 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, have been moved (ss. 6 and 35, Bill 8) to the *Act* as s. 34.1. This prevents 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 has been 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 has been 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.

5. BYLAWS

(a) Age bylaws. Section 123 of the *Act* has been 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 has been 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 has been removed from s. 128 of the *Act* (s. 21, Bill 8). Bylaw amendments 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.

6. RENTAL RESTRICTIONS

(a) Cap on rentals. Section 142 of the *Act* has been 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* has been 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 was ambiguous on this point.

(c) Hardship exemptions. Section 144 of the *Act* has been 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 has also been 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 existing 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 existing provisions were silent on what happened if a hearing was 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.

7. INFORMATION AND RECORDS

Rights of former owners and tenants. Former owners and tenants now 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.

8. LEASEHOLD STRATA PLANS

Section 216 of the *Act* has been 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.

PROVISIONS NOT IN FORCE

A significant portion of Bill 8, primarily relating to amendments to the expanded role of the Provincial Court in strata dispute resolution and amendments to financial requirements of strata corporations, has not yet come into force. No time-frame has been given as to when the remaining sections will come into force.

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.

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