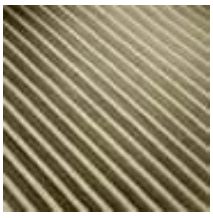

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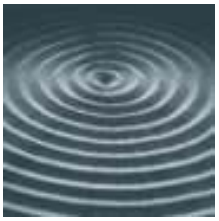

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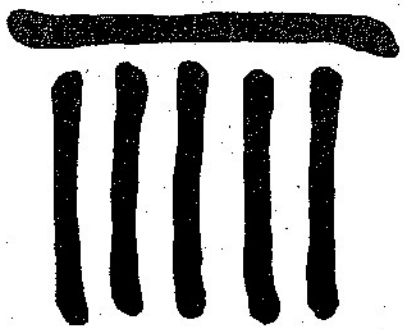
THE STRATA PLAN

By Lynn I. Ramsay

APRIL 11, 2002



Strata Property – 2002 Update

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STRATA PROPERTY – 2002 UPDATE

Chapter 4

4. THE STRATA PLAN

These materials were prepared by Lynn I. Ramsay, QC, of Miller Thomson LLP, Vancouver, B.C. for Continuing Legal Education, April 2002.

CHAPTER 4

4. THE STRATA PLAN

CONTENTS

STRATA PLANS

I. Introduction

Strata plans must meet the requirements of the *Strata Property Act* ("the Act"), the regulations thereto including the prescribed forms, and the *Land Title Act* before the strata plan can be deposited in the Land Title Office. A strata plan must also reflect the nature of the development and establish what the owner developer believes will be marketable whether for sale, lease or strata lots Once a strata plan has been deposited in the Land Title Office, whether under the Act or under previous legislation such as the *Condominium Act*, it can be amended by either the owner developer or the owners of the strata lots.

Surveyors prepare strata plans, but solicitors must identify the options available to the owner developer so the surveyor can be properly instructed before preparation of the strata plan. Before the strata plan is deposited in the Land Title Office solicitors generally determine that the strata plan complies with the technical requirements of the Act and the *Land Title Act*, and that the strata plan reflects the intentions of the owner developer with respect to issues such as the boundaries of strata lots, the nature and extent of common property, and the designation of limited common property.

If you are reviewing title to a strata lot and the strata plan is already deposited in the Land Title Office, it can be important to determine if it was deposited under the Act or under earlier legislation as there are differences, particularly for interest on destruction and parking. A strata plan filed after June 30, 2000 may be amended by the owner developer with respect to designation of parking spaces and there is no schedule of interest on destruction. The owner developer cannot amend a strata plan deposited in the Land Title Office prior to June 30, 2000, and there is no provision in the Act allowing a schedule of interest on destruction of a strata plan filed before June 30, 2000 to be amended, but it can be cancelled entirely.

II. Strata Plans

There are four types of strata plans: non-bare land; bare land; leasehold; and phased, which could be any of the three previous types.

Section 239 of the Act provides that land may be divided into two or more strata lots and that a strata lot may not be subdivided by the deposit of a strata plan "that, under s. 2 would establish a strata corporation." You cannot file a strata plan where the parent parcel is a strata lot even if dealing with a bare land strata lot. Historically, the Land Title Office would not accept such a strata plan for registration, but their position was questionable so s. 239 makes it clear that that you cannot deposit such a strata plan.

The Act does not define a strata plan but defines a strata lot as a lot shown on a strata plan and defines a bare land strata plan as a plan "where the boundaries of the strata lots are defined on a horizontal plane by reference to survey markers and not by reference to the floors, walls or ceilings of a building." Section 119 of the Act defines a leasehold strata plan as a strata plan in "which the land shown on the strata plan is subject to a ground lease." There is also a definition of and requirements with respect to a ground lease in Part 12 of the Act.

A phased strata plan is, by definition, a strata plan that is deposited in successive phases under the provisions of Part 13 of the Act. Once the strata plan for the first phase is deposited in the Land Title Office, on deposit of a strata plan for each subsequent phase, there is an automatic subdivision of the portion of the parent parcel in the phased strata plan. That portion is then "consolidated" with the land in the strata plans previously deposited in the Land Title Office and the strata plan created on deposit of the phased strata plan is automatically consolidated with the existing strata corporation (s. 228).

A strata lot is defined as a lot shown on a strata plan. Common property is defined as part of the land and building on a strata plan that is not a strata lot but includes pipes, wires, cables for the passage of utilities if located within a boundary wall or within a strata lot if intended to be used in connection with "the enjoyment of another strata lot or the common property" (s. 1(a)).

On deposit of a strata plan the Land Title Office creates for the strata corporation a general index and a common property record. The common property record will be used to note a charge or other interest that separately charges the common property. Regulation 14.14 requires the registrar to note on the common property record "any freehold disposition of common property by the strata corporation and any designation or removal of limited common property."

A strata plan no longer includes the Schedules of Voting Rights, Unit Entitlement and Interest on Destruction. These are now prescribed forms for Unit Entitlement and Voting Rights that are submitted to the Land Title Office concurrently with the strata plan and noted by that office in the general index for that strata corporation. Interest on Destruction is not determined until there is a dissolution of the strata corporation, in which case the Interest on Destruction will be determined as of the date of dissolution based on the assessed values of each strata lot. If the Schedule of Interest on Destruction is part of a strata plan (i.e., the strata plan was deposited prior to June 30, 2000), that schedule will govern (s. 273(3)).

A. Forms Accompanying a Strata Plan

When a strata plan is deposited in the Land Title Office, it must be accompanied by both a Form V Schedule of Unit Entitlement ("Form V") and a Form W Schedule of Voting Rights ("Form W") (s. 245(a) and (b)).

Section 246(3) requires that unit entitlement for a residential strata lot be determined as follows:

(a) habitable square metres, as determined by a British Columbia Land Surveyor ("BCLS"); or

(b) a whole number which is the same for each strata lot; or

(c) a number approved by the Superintendent of Real Estate (the "Superintendent").

For a non-residential strata lot:

(a) total area, in square metres of the strata lot, determined by a British Columbia Land Surveyor ("BCLS"); or
(b) a whole number which is the same for each strata lot; or
(c) a number approved by the Superintendent.

For a strata plan with both residential and non-residential strata lots, Form V establishing the unit entitlement for each strata lot must be approved by the Superintendent. It appears to be the preference of the Superintendent that the unit entitlement for residential strata lots to be determined on the basis of habitable square footage of that strata lot and that the unit entitlement of a non-residential strata lot be determined by dividing the average of the habitable area of the residential strata lots into the habitable area of the non-residential strata lot.

Regulation 14.2 provides that, for the purposes of s. 246, "habitable area" is defined as "the area of a residential strata lot which can be lived in, but does not include patios, balconies, garages, parking stalls or storage areas other than closet space." The decision as to whether an area within a strata lot can be lived in is made by the surveyor who must determine whether an area is a storage area or an area that can be lived in, is it a garden room or a balcony. It should be noted that even though the habitable area of a strata lot does not include a garage or parking stall, these areas can still be part of a strata lot.

Unit entitlement for strata lots in a bare land strata plan, whether or not the strata lots are residential or non-residential or both, must be a whole number that is the same for each strata lot, or a number approved by the Superintendent of Real Estate (s. 246(6)).

Form V is a prescribed form that must "accompany" the strata plan when it is deposited in the Land Title Office. The Form has three separate sections for three different strata plans: one where all strata lots are residential; one where all strata lots are non-residential; and the third where there are both residential and non-residential strata lots in the same strata plan.

The applicant completes the appropriate section of the Form V and, in each case if the area is based on habitable area calculations, the surveyor signs the applicable section of the form.

Sections 246(3)(a)(ii) and (b)(ii) permit each residential strata lot or each non-residential strata lot to have the same unit entitlement, even if the habitable areas differ. This doesn't seem to be common yet and could create problems if the lots vary significantly in habitable area. The Form V includes a table that lists the habitable area for each strata lot even if the unit entitlement is the same for each residential and for each non-residential strata lot.

If the strata plan includes both residential and non-residential strata lots and the unit entitlement is based on habitable area of the strata lots, the surveyor must sign the form twice; once for the residential strata lots, and once for the commercial strata lots. The Form V must be approved by the Superintendent (s. 246 (5)).

If the unit entitlement is determined on the basis of habitable area, an owner may apply to the court under s. 246(7) for an order to change unit entitlement (for new or existing strata plans), if the unit entitlement does not accurately reflect the habitable area of the strata lot. Regulation 14.13 provides that an owner may not apply to the court unless the variation is plus or minus 10% or the actual habitable area varies by plus or minus 10%. There is no right to apply to the court to vary the unit entitlement if it has been determined on a basis other than habitable area such as the same number for all strata lots or a formula approved by the Superintendent.

If the strata plan consists of all residential strata lots, the Form W will provide for one vote per strata lot. If there is a mix of residential and non-residential strata lots, the Form W provides that each residential strata lot shall have one vote. The votes for each non-residential strata lot shall be determined by dividing the unit entitlement of the non-residential strata lot over the average unit entitlement of the residential strata lots (s. 247(2)(a)(ii)).

If all the strata lots are non-residential, the votes for each strata lot are determined by dividing the unit entitlement of the strata lot by the total unit entitlement of all strata lots (s. 247(2)(b)).

You are not restricted to the formulas in s. 247 if the strata plan has all non-residential strata lots or both residential and non-residential strata lots and if your alternate allocation is acceptable to the Superintendent. The Superintendent's approval is evidenced by the Superintendent signing the Form W (s. 248).

The Form W is signed by the owner developer who is declaring that the number of votes for each residential strata lot is one. The number of votes for each non-residential strata lot is determined in accordance with s. 247(2)(a) or (b) or the alternative allocation has been accepted by the Superintendent. The registrar is under no duty to ensure that the Form W or the Form V comply with the requirements of the *SPA*, including whether or not the approval of the Superintendent is required (s. 249(3)).

A phased strata plan where the strata plan for the first phase was deposited in the Land Title Office prior to July 1, 2000, must include the Schedules of Unit Entitlement, Interest on Destruction and Voting Rights that would have been required under the *Condominium Act*. These forms must be approved by the Superintendent. Regulation 17.17 provides that ss. 245(a) to (c), 248, 247, 248, and 250(2)(a) to (c) do not apply to a phased strata plan.

There are two other prescribed forms that must accompany the strata plan when it is deposited in the Land Title Office: Form X, Strata Corporation Mailing Address; and Form Z, Application to Deposit Strata Plan. The Form Z does not contain the statement that the strata plan is a conversion, which had been a Land Title Office requirement under the *Condominium Act*.

B. Criteria for Strata Plans Generally

As noted above, there is no definition of a strata plan in the Act; however, ss. 240 to 244 establish the criteria for a strata plan. The land included in a strata plan must be a single parcel created by a subdivision plan, reference plan or air space plan. A phased strata plan can include lands on separate parcels (s. 240). If the strata plan includes a building that has not been

previously occupied, the surveyor must endorse the plan with a Form S Certificate of Non-Occupancy. This certificate must be dated no more than 180 days before the date the strata plan is submitted for deposit to the Land Title Office. Regulation 14.1 provides a definition for "previously occupied" for the purposes of s. 241 and 242, which is "occupied at any time in its past for any purpose, including residential, commercial, institutional, recreational or industrial use, but does not include the occupation of a proposed strata lot by the owner developer solely as a display for the sale of strata lots in the proposed strata plan." If the building has been previously occupied, the surveyor cannot provide the Form S, and the strata plan must be approved as a conversion in accordance with s. 242.

C. Criteria for Bare Land Strata Plans

A bare land strata plan must be approved by an approving officer. Section 243(3) prohibits the approving officer from approving a bare land strata plan unless it complies with the regulations. Bare Land Strata Regulations B.C. Reg. 75/78 O.C. 418/78 were applicable to bare land strata plans filed under the *Condominium Act* and continue to be the applicable regulations under the Act. I don't think there is a order in council specifically prescribing these as the regulations under the Act, but s. 36(1)(e) of the *Interpretation Act* provides that all regulations made under a prior act remain in force until specifically repealed and "are deemed to have been made under the new enactment, in so far as they are not inconsistent with the new enactment."

Section 2(1) of the regulation requires a bare land strata plan conform to municipal zoning requirements, the *SPA* and regulations made by the surveyor general. Notwithstanding the restriction of s. 2(1), the approving officer may approve lot sizes that are smaller than established by the zoning bylaw so long as:

> (a) the total area of the land in the bare land strata plan (exclusive of those portions intended to provide access routes) divided by the number of strata lots intended to be created is no less than:
>
> (i) where the bylaw specifies a minimum lot size but no average lot size, the minimum lot size so specified, and
>
> (ii) where the bylaw specifies a minimum lot size and an average lot size the average lot size so specified, and
>
> (b) the approving officer is satisfied that a building or structure appropriate to the intended use can be constructed on each of the strata lots in compliance with a development permit, where a development permit has been issued by the municipality or regional district.

The approving officer may require a written statement from the owner developer as to the intended use of the proposed strata lots (Reg. 3(1)(c)).

The approving officer may refuse to approve a bare land strata plan for the same reasons that he or she may refuse to approve a subdivision plan, public interest, injurious affect on neighbouring properties, subject to flooding or erosion (s. 3(1)(e)). If the land is reasonably expected to be subject to flooding, the approving officer must obtain the approval of the Ministry of the Environment. Section 3(3) and the approving officer can request lands be dedicated for construction of highways and that the highway be constructed by the owner developer (s. 5). The approving

officer shall refuse to approve a strata plan where an access route encroaches on a strata lot (Reg. 7). If the land included in the bare land strata plan is adjacent to water, owned by the Crown or a person other than the Crown, s. 8 sets out the requirement for dedication of lands for access to the water, generally a strip at least 20 meters in width. The approving officer may only waive these requirements with the approval of the Ministry of Transportation and Highways.

As with a subdivision plan, if the land in the bare land strata plan adjoins a body of water, the approving officer may require a dedication of a strip of land not to exceed 7 mm along the shore of the body of water to provide public access. The area of the land dedicated may not exceed 5% of the total area of the land. The subdivision plan exemption is if the smallest lot created is less than two hectares applies to a bare land strata plan (s. 9).

If it would be a condition of the subdivision of the land in the strata plan that the owner developer provide on or off-site services and utilities such as water and sewer, the approving officer may not approve the bare land strata plan unless the same services are provided (ss. 12 and 13).

The approving officer may require parking as common property as he or she deems necessary (s. 17).

Once the bare land strata plan has been approved by the approving officer it must be submitted for deposit in the Land Title Office within two months and if not submitted by that date, or such other date as the registrar may agree, the approving officers approval is "conclusively deemed to be revoked" (s. 20).

There are separate regulations for cancelling a bare land strata plan (B.C. Reg. 556/82 O.C. 2238/82), which were the regulations under the *Condominium Act*. While I will not be dealing with cancellation of strata plans—bare land or otherwise—in this paper, I do want to draw them to your attention since they are referred to in s. 286, which provides that Part 16 of the Act, which deals with Cancellation of Strata Plan and Winding-Up of Strata Corporations, applies to bare land strata corporations unless the regulations override.

D. Requirements for Strata Plans

Section 244 and Regs. 14.3 and 14.4 detail the requirements for a strata plan, whether leasehold, phased or bare land. In addition to the requirements under the Act and the regulations, strata plans must also comply with the regulations made by the surveyor general (s. 244(1)(e)). The regulations establish the basic requirements for a strata plan such as a mylar copy, the size of sheets, numbering sequence, the contents of the first page, if the strata plan includes a building. One of the more interesting requirements is in Reg. 14.4(f), which provides that if the strata plan includes a building, any "line shown as a boundary of the strata lot represents a wall built from floor to ceiling unless the strata plan indicates that the line does not represent a wall built from floor to ceiling and in that case the area of the space must be dimensioned with reference to a wall or walls." We generally assume that the boundaries of the strata lot are to the mid-point of floors, walls and ceilings but the information that the surveyor notes on the first page of the strata plan whether in a legend, or just as a note, is important but often overlooked.

A strata plan must show the boundaries of the land, and on a non-bare land the buildings, and the boundaries of the strata lot. Unless the strata plan shows otherwise, the boundaries of a strata lot are normally the mid-point between the "surface of the structural portion of the wall, floor or ceiling that faces the strata lot and the surface of the structural portion of the wall, floor or ceiling that faces the other strata lot, the common property or the other parcel of land." If strata lots are not separated by a "wall," the boundary of the strata lot is as shown on the strata plan. The boundary must be shown in a manner approved by the registrar (s. 68(1) and (2)).

Areas that are intended to be used together with a residential strata lot, such as parking stalls, can be included within the boundaries of a strata lot whether or not they are physically adjacent to the strata lot, but s. 244(2) prohibits parking stalls that are "intended to be used in conjunction with a residential strata lot" from being designated as a separate strata lot. Can parking stalls, meant to be used by occupants of residential strata lots in Whistler, be separate strata lots?

A strata plan must include a certification by a BCLS that:

> (a) the buildings shown on the strata plan are within the external boundaries of the land that is the subject of the Strata plan; or
>
> (b) "appropriate and necessary easements or other interests exist to provide for access to any parts of the building that are not within the boundaries" (s. 244(1)(f)).

It is interesting to note that the wording of the Form U, which is the prescribed form for the certification, differs from the wording in s. 244(1)(f). Form U states that:

> (a) the buildings shown on this strata plan are within the external boundaries of the land that is the subject of the strata plan [*where applicable add*] subject to clause 2 of this endorsement.
>
> (b) that certain parts of the buildings are not within the external boundaries but appropriate and necessary easements or other interests are registered under No. [*registered charge number*], as set out in s. 244 (1) of the *Strata Property Act*.

The section refers to "or other interests exist" but the form refers to registered interests. I suspect that the surveyors have a more significant problem than with this form. The surveyor is certifying that the easements or other interests are appropriate and all that are necessary. I don't think it would be unreasonable for a surveyor to require an opinion letter from a solicitor, the surveyors or the owner developers, confirming that the easements as registered are those that are necessary and the contents are appropriate before a Form U is signed.

E. Bare Land Strata Plans

The boundaries for strata lots on a bare land strata plan are subject to regulations, but normally established by reference to survey markers. As noted above, the applicable regulations are those under the *Condominium Act*.

F. Leasehold Strata Plan

A leasehold strata plan must comply with the requirements for most strata plans, but there can be two "schedules" that are either part of a leasehold plan or can be filed concurrently with the strata plan. One is the basis for calculating the value of the owner of a leasehold strata lot at the end of the term of the ground lease (s. 214(b)) and the other is a restriction on lease, assignment or occupancy of a leasehold strata lot (s. 205).

Section 214 is basically the same as s. 97 under the *Condominium Act* and, unfortunately, it is as confusing as the old section. A number of ground leases now include within the ground lease how the value of the owner of a leasehold strata lot is to be determined on the expiration of the term of the ground lease. A number of non-market leasehold ground leases provide the value of the interest will be $1. A schedule of restrictions under s. 205 is most common for non-market rental housing.

G. Phased Strata Plan

One of the confusing aspects of phased strata plans is where the initial strata plan was registered in the Land Title Office prior to June 30, 2000 and if you want to amend the Form E Phasing Declaration. I hesitate to suggest what you should do if you want to "amend" a Form E. My current understanding is that you must file a new Form P as the Land Title Office will not accept an amended Form E. I have been known to have the strata corporation and the approving officer sign both and let the Land Title Office choose.

A phased strata plan, where the strata plan for the first phase is registered after June 30, 2000, must comply with the requirements described above and must be accompanied by a Phased Strata Plan Declaration (Form P). The Form P is very similar to the Form E under the *Condominium Act*, but the approval of the approving officer expires after one year unless the strata plan for the first phase is deposited in the Land Title Office within that one year period (s. 222(2)). The strata plan for a subsequent phase must include the schedules of unit entitlement, voting rights and interest on destruction and these forms must be approved by the Superintendent (Reg. 17.17).

A common facility is defined as "a major facility in a phased strata plan, including a laundry room, playground, swimming pool, recreation centre, clubhouse or tennis court if the facility is available for the use of the owners" (s. 217). This definition only applies to a phased development. The interesting question is whether it must be available for the use of all owners and whether it applies to facility such as a swimming pool, which might only be used by the owners of residential strata lots in a strata plan that includes both residential and non-residential strata lots.

The strata plan for each phase must be endorsed by the approving officer who must provide a Form Q (s. 224(2). If there are Common Facilities in that phase, there must be a separate endorsement that the Common Facility has been provided for Form R (s. 225 and Reg. 14.59(2)).

It is now clear that the strata plan for each phase must be deposited in the Land Title Office in the same order as shown on the Form P (s. 221(2)). If you want to reconfigure the phases, the Form P must be amended in accordance with the provisions of s. 233.

If the strata plan for the first phase is deposited in the Land Title Office after June 30, 2000, the same formula must be used to determine the unit entitlement of the strata lots in each phase (s. 221(3)). The Act does not specify that the same formula must be used to determine the voting rights of the strata lots in each phase, but I think that is the preferred practice. As noted above if the strata plan for the first phase was deposited prior to June 30, 2000 then the Schedule of Unit Entitlement must be part of the phased plan and approved by the Superintendent.

If the owner developer elects not to proceed with a subsequent phase, the remainder of the lands described in the Form P may only be developed in accordance with the municipal bylaws relating to that parcel as a separate parcel, But, the municipality may take into consideration the development constructed in earlier phases and treat the remainder as if it were part of the phased development rather than a separate parcel (s. 237).

H. Parking

The owner developer must decide how to deal with parking stalls or spaces. The first decision is whether they should form part of a strata lot, be on leased lands or be on the common property. If parking stalls are to be located on common property then the owner developer must decided whether they should be limited common property and how that designation should be made. The decision as to how and when the common property used for parking will be designated as limited common property must generally made when the disclosure statement required under the *Real Estate Act* is filed with the Superintendent.

The solicitor or the owner developer will have to instruct the surveyor on how parking located on common property is to be dealt with on the strata plan. The alternatives seem to be:

(a) designate parking stalls located on common property as limited common property for specific strata lots on the strata plan before it is deposited in the Land Title Office;

(b) leave all parking areas as common property with the intention of amending the strata plan, before the first general meeting of the strata corporation, to designate parking stalls as limited common property;

(c) include parking stalls within the boundaries of some or all of the strata lot;

(d) designate the parking stalls as limited common property by a 3/4 vote after the strata plan is deposited in the Land Title Office and before the first general meeting;

(e) lease or grant an option to lease to another entity, that portion of the building on the strata plan including the parking areas before the strata plan is deposited in the Land Title Office; and

(f) or simply leave all parking stalls as common property to be designated as limited common property by a resolution approved by a 3/4 vote after the first annual general meeting.

The primary advantage to a designation of limited common property on the strata plan is that it can only be revoked or amended by a unanimous resolution. The owner developer may, before the first annual general meeting of the new strata corporation, amend the deposited strata plan to designate parking stalls as limited common property for the exclusive use of owners of strata lots in the strata plan and such designation cannot be revoked or amended without a unanimous vote (s. 258(1)). The problem with the section is that the developer must act honestly and in good faith "with a view to the best interests of the strata corporation" and must exercise the "care, diligence and skill of reasonably prudent person in comparable circumstances." The basic question is how can the owner developer designate parking stalls, which were formerly common property, as limited common property for specified strata lots and meet the test of acting in the best interests of the strata corporation.

Section 258(3) allows the owner developer to amend the strata plan before the first annual general meeting to designate as limited common property for each strata lot a maximum of two extra parking spaces. Extra parking stalls must be in addition to the minimum number of parking stalls required by the applicable zoning plus the greater of one visitor parking stall for each 10 strata lot or the number of visitor parking spaces required by the applicable municipal bylaws (s. 258(4)).

The owner developer does not have to comply with the standard of care applicable for a designation under s. 258(1), but must in accordance with s. 258(5) "act honestly and in good faith and exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances." This seems to imply that if the designation is not consistent with other similar projects it may not meet the test of exercising the care of a reasonably prudent person in comparable circumstances.

If the strata plan is being amended under either ss. 258(1) or 258(4), the application to amend the plan must meet the requirements of the Land Title Office and s. 258(7).

Section 258 does not apply to a strata plan deposited before July 1, 2000 (Reg. 17.19).

If the owner developer wants to designate parking as limited common property by a resolution approved by a ¾ vote pursuant to s. 73, it may do so before the first conveyance to a purchaser without holding a special general meeting (s. 8). But, if it does so after the first conveyance, it must hold a special general meeting and the resolution must be approved by a unanimous vote at that meeting (s. 11(11)).

The owner developer, while it is the strata council, no longer has the ability to grant exclusive use of common property as it could under s. 117(f) of the *Condominium Act*. These grants were generally a license to the developer which was assigned to the purchasers of individual strata lots.

The owner developer may still lease or option to lease that portion of the building that contains the parking areas if the lease is entered into after the building is built and before the strata plan is deposited in the Land Title Office. The lease may contain the same rights of assignment or subletting that are presently contained in such leases.

I. Other Limited Common Property

The designation of parking stalls as limited common property probably raises the most difficult issues, but there are other portions of the common property that may be designated on a strata plan as limited common property. These include balconies, patios, hotel lobbies, restaurant terraces, loading bays, electrical and mechanical rooms which service only some of the strata lots, lockers, etc.

As noted above, the primary advantage of designated limited common property on the strata plan, generally before it is deposited in the Land Title Office, is that it can only be revoked or amended with unanimous resolutions, as that is defined in the Act. One disadvantage is that you cannot attach conditions to the designation such as hours of use, permitted uses, responsibility for maintenance and repair, provision of additional insurance. All of these issues have to be dealt with in the bylaws for the strata corporation. Section 2 of the Schedule of Standard bylaws provides that an owner "who has the use of limited common property must repair and maintain it, except for repair and maintenance that is the responsibility of the strata corporation under these bylaws."

A strata plan, whether filed before or after June 30, 2000, may be amended to designate limited common property or to remove a designation of limited common property. Such an amendment will require a unanimous resolution and filing of a plan showing the amendment in the Land Title Office (s. 257).

J. Amending a Strata Plan Generally

A strata plan may be amended other than to designate or remove a designation of limited common property as described above. There are a whole series of possible amendments which I detailed in the paper I did for the course put on by CLE in May of 2000, and I don't intend to repeat that material, but I would like to identify some issues that have arisen or been identified since that earlier paper.

I have found that one of the major problems when you are substantially amending a strata plan is not determining whether or not the plan can be amended to meet your client's goal, but how to determine what the requirements of the Land Title Office will be for that specific amendment. The difficulty is filing plans or documents contemplated under one act in an office operating under another.

So far, the most difficult amendments I have dealt with involved adding a land adjacent to a strata plan and converting common property into a strata lot. Section 262 permits land that is in the name of the strata corporation to be added to a strata plan and requires filing of a reference or explanatory plan. The Land Title Office requires that the plan be signed by the registered owners of all strata lots and the holders of financial charges registered against the strata lots or the common property.

If you want to add common property to a strata lot, you must follow a very circuitous route. First, you must make the common property "land held by the strata corporation" by depositing a

subdivision plan which meets the requirements of the *Land Title Act* (s. 265(1)). This subdivision plan must meet the requirements of the *Land Title Act* (s. 265(2)) and will, therefore, need to be signed by all the parties who would sign a subdivision plan. This may turn out to be a very unusual subdivision plan particularly if the common property being added to the strata lot is within a building, a portion of a hall or lobby, a locker, etc. Once the surveyor has determined how to show these areas on a subdivision plan, you must comply with s. 262 to add the land held by the strata corporation to the common property of the strata corporation. This will require another plan signed by basically the same parties who signed the subdivision plan under s. 265 and all of the certificates and approvals listed in that section.

When a strata plan filed before June 30, 2000 is amended pursuant to s. 259, to add to or consolidate a strata lot, or s. 262, to create a new strata lot, you must file a Form Z1 amending the Schedule of Interest on Destruction but if the amendment is one that requires the approval of the strata corporation you might suggest that the schedule be eliminated. Section 17.22 provides that if approved by a unanimous resolution a Schedule of Interest on Destruction may be cancelled. The resolution and prescribed certificate must be filed in the Land Title Office before it is effective.

Most approving officers are still unfamiliar with the provisions of the Act as they relate to amendment of strata plans and are very cautious about providing the certificates required by the various sections. An approving officer who was asked to approve an amendment that creates new strata lots in a newly constructed addition to an existing building had to be persuaded that it was not easier to deem the existing strata corporation destroyed and file a new strata plan. Unfortunately, the new strata plan would have been a conversion and the municipal building department was not prepared to confirm that the "building" complied with the current building code. There was also a question from the Land Title Office as to whether a Form T, required for a conversion under s. 242, was required if new strata lots were being created. The Land Title Office decided that it was not required. I think because s. 242 refers specifically to a building included in a strata plan not to an amendment to a strata plan, and the provisions of Part 15 of the Act which contemplates creation of new strata lots within an existing strata corporation which does not require a Form T.

III. Conclusion

The Act does not simplify or change the requirements for depositing a new strata plan in the Land Title Office but the ability to amend it in the various ways set out in Part 15 of the Act. It can deal with a number of problems that have arisen with respect to strata plans filed under the *Condominium Act*. As the requirements of the Land Title Office and the municipal approving authorities are established and or clarified hopefully the requirements to amend a strata plan will be simpler and faster.

We tend to forget the importance of the strata plan and the information it contains when a transaction involves one or more strata lots. Hopefully, the information in this paper will be of assistance when you are either reviewing a strata plan or depositing one in the Land Title Office.