

# Guide 25

## What to Know About Resolving Complaints

### **IMPORTANT NOTICE**

This guide was prepared by the Superintendent of Real Estate and updated by the Ministry of Housing and Social Development. This guide, along with other guides in the series, provides basic information about certain parts of the British Columbia *Strata Property Act* (the "Act") and its Regulations.

### **Readers cannot rely on the guides for legal advice**

The guides do not:

- provide a legal interpretation of provisions of the *Act* or Regulations. Please consult the *Act* and Regulations and court judgments to determine the complete and precise requirements of the legislation.
- include information about how the courts may have interpreted provisions of the *Act* or Regulations.

Readers should seek professional advice if they need to determine specific legal rights and duties which may apply in their particular situations.

The Province of British Columbia may periodically update the guides. Nevertheless, neither the Superintendent of Real Estate, nor any other authority of the Province of British Columbia, is liable for any inaccurate or incomplete information in any guide. For the convenience of readers, **updated information has been flagged in bold italic** in the guides and will remain marked this way for approximately one year from their noted revision dates.

In addition, the Standard Bylaws referred to in the guide do not necessarily apply to every strata corporation. Strata corporation bylaws can be enacted, amended or repealed by the developer or the strata corporation. Please conduct a search at the Land Title Office to obtain a copy of all filed bylaws and bylaw amendments for a specific strata corporation to determine which bylaws are applicable.

From time to time strata lot owners may become unhappy with the actions or inaction of their neighbours, the strata council, strata manager, or with a decision taken by the strata lot owners acting collectively.

Additionally, from time to time, the strata corporation may require assistance in enforcing the provisions of the Act, Regulations, bylaws and rules. The following material outlines the overall structure of the Act and the provisions in the Act which can be used to resolve complaints.

**1. Structure of the Strata Property Act**

The Act sets out the manner in which a strata corporation should operate and conduct its affairs. For example the Act provides:

- how to elect a strata council, the responsibilities of the strata council and how the strata council can be controlled;
- requirements relating to the records a strata corporation must maintain, and who has access to those records;
- procedures relating to calling and holding meetings, voting, and bylaw amendments;
- requirements relating to the finances of the strata corporation including the manner in which strata fees are calculated, budget approval, and requirements for a special levy.

The operation of a strata corporation and the decision making process are based on democratic principles. The following are examples of the provisions in the Act which create a democratic structure:

- every strata lot owner has a vote;
- a strata council is elected annually by the strata lot owners and is subject to the direction of the strata owners demonstrated by a majority vote at a general meeting;
- decisions at general meetings are generally approved by majority vote, unless the Act specifically provides a higher voting requirement;
- certain decisions such as creating or amending bylaws (unless the strata lots are commercial and a different voting threshold has been approved in a bylaw), and the approval of special levies, significant changes to the use of common property, and expenditures from the Contingency Reserve Fund, all which would have a significant impact on strata owners must be approved by a  $\frac{3}{4}$  vote at a general meeting.

The strata corporation will have bylaws and may have rules which operate as follows:

- bylaws can provide for the control, management, maintenance, use and enjoyment of the strata lots, common property and common assets and for the administration of the strata corporation;
- amendments to the Standard Bylaws must be approved by a resolution approved by a  $\frac{3}{4}$  vote.

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[Note: **for residential strata corporations, amendments require a unanimous vote if bylaws are changed before the second annual general meeting**; if the strata lots are non residential, bylaws may be amended prior to the second AGM by a  $\frac{3}{4}$  vote or some other voting threshold set out in a bylaw.]

- rules can govern the use, safety and condition of the common property and common assets;
- rules must be ratified by a resolution approved by a majority vote at the first annual general meeting held after the rule is made.

The Act contains provisions which allow individual strata lot owners to make their views known to the strata corporation as a whole. Strata lot owners can:

- require that the strata corporation hold a special general meeting to consider a resolution or other specified matter, with the written support of **20% (25%)** of the strata corporation's votes;
- propose a resolution or other matter to be included on a general meeting's agenda with the written support of **20% (25%)** of the strata corporation's votes.

The Act provides that matters in dispute may be referred to either:

- arbitration ;
- Provincial Court (Small Claims Court);
- Supreme Court.

The Act is self-regulating which means that:

- owners and other interested parties must use the provisions of the Act (including arbitration and court action) to enforce the requirements of the Act;
- there is no government office which will:
  - investigate the activities of strata corporations;
  - order strata corporations, strata councils or strata lot owners to do, or refrain from doing, any act; or
  - interfere in the decisions of strata councils or strata corporations.

**2. Role of Government**

The Superintendent of Real Estate's office cannot provide a legal opinion to strata lot owners, or pass an opinion on the appropriateness of a strata corporation's or strata council's actions.

The Superintendent of Real Estate has prepared a number of Guides, like this one, which relate to the Strata Property Act.

The Guides have been prepared to assist the public in understanding the rights and responsibilities of strata lot owners, tenants and strata corporations.

The Guides are available on the Financial Institutions Commission (FICOM) website at <http://www.fic.gov.bc.ca/responsibilities/strataowners/overview.htm>.

The *Strata Property Act*, unlike the *Residential Tenancy Act*, does not provide for a dispute resolution tribunal. Therefore, parties dealing with a dispute within a strata corporation must be aware that it is the responsibility of the parties involved to resolve the matter through informal or formal processes.

**3. Informal and Formal Dispute Resolution Processes**

The Act provides strata lot owners with informal and formal mechanisms to resolve disputes.

The informal mechanisms to resolve disputes permit strata lot owners:

- to requisition a general meeting to consider a resolution or other specified matter;
- to place resolutions and other items on a meeting's agenda.

The Standard Bylaws contains provisions that:

- permit a dispute resolution committee to be used to resolve disputes if:
  - the use of a dispute resolution committee is agreed to by all parties involved in the dispute.
- permit an owner or tenant to request a meeting with the strata council to discuss matters of concerns.

When a complaint or concern cannot be remedied through informal processes, the parties may utilize the formal dispute resolution processes of:

- arbitration;
- Provincial Court (Small Claims Court); or
- Supreme Court.

[For more information on formal dispute resolution processes please refer to “*Guide 26: Arbitration*” and “*Guide 27: Court Actions*”.]

#### 4. **Requesting a Strata Council Hearing**

The **Act** (~~Standard Bylaws~~) provides that an owner or tenant may request a hearing at a strata council meeting. A “hearing” means an opportunity to be heard in person.

The **Act** (~~Standard Bylaws~~) provides that:

- the owner or tenant must apply for a hearing and state the reason for the request in writing;
- the strata council must hold the hearing within **4 weeks** (~~a month~~) of the request;
- if a decision was requested, the strata council must give the applicant a written decision within one week of the hearing.

#### 5. **Requisitioning a Special General Meeting**

The following procedures apply when an owner or tenant requisitions a special general meeting of the strata corporation to consider a resolution or other specified matter:

- the owner or tenant must present the strata council with a written demand signed by persons holding at least **20%** (~~25%~~) of the strata corporation’s votes;
- the strata council has four weeks from the date of the request to hold the special general meeting;
- unless all the eligible voters, in writing, waive the need to hold the meeting and consent to the resolution, if the meeting is not held within four weeks, the persons who have signed the demand for the meeting may call and hold the meeting; and
- the resolution or other matter specified in the demand for the meeting must be the first item on the meeting’s agenda.

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At the general meeting the resolution or concern specified in the demand for the meeting will be raised and the strata lot owners attending the meeting can be requested to resolve the matter.

Depending on the issue at hand, the strata lot owners could, by majority vote:

- direct or restrict the actions of the strata council, except in the following circumstances:
  - when the direction or restriction is contrary to the Act, Regulations or bylaws;
  - when the direction or restriction interferes with the council's discretion to determine whether a person has contravened the bylaws, should be fined and the amount of the fine, whether the person should be denied access to a recreational facility, or ***whether a person should be required to pay the reasonable costs of remedying a contravention of the bylaws or rules; and***
  - ***whether an owner should be exempted from a bylaw that prohibits or limits rentals.***

Additionally, for resolutions requiring a  $\frac{3}{4}$  vote, if the proposed resolution was included with the notice of the meeting, the owners could pass resolutions:

- to designate certain common property as limited common property or to change the use of certain common property;
- cancel the strata management contract;
- any other resolution that would resolve the matter.

The owners are able to use the special general meeting to discuss issues of concern and to resolve the matters as appropriate.

***Note: for residential only or bare land stratas, bylaws can be changed only with unanimous consent at an annual or special general meeting held prior to the second AGM.***

**6. Placing an Item on a General Meeting's Agenda**

An owner or tenant who wishes to raise a matter of concern at a general meeting, but does not wish to requisition a special general meeting, may instead propose a resolution or matter to be included at the next annual or special general meeting as follows:

- the owner or tenant must present the strata council with a written demand signed by persons holding at least **20% (25%)** of the strata corporation's votes;
- the resolution or matter raised in the written demand must be included in the notice of the meeting and appear on the agenda.

**7. Voluntary Dispute Resolution**

The Standard Bylaws provide a voluntary process for resolving disputes that can be used by a:

- strata lot owner;
- tenant; or
- strata corporation.

A dispute may be referred to a dispute resolution committee if the dispute involves the Act, Regulations, bylaws or rules.

A dispute resolution committee can be made up of:

- one owner or tenant of the strata corporation nominated by each of the disputing parties; and
- one owner or tenant to chair the committee chosen by the persons who were nominated by the disputing parties; or
- any number of persons consented to, or chosen by a method that is consented to, by all the disputing parties.

To utilize the dispute resolution process one of the parties to the dispute must:

- request that the dispute be referred to a dispute resolution committee;
- obtain the consent of the other party or parties to participate in the process. If the other party or parties do not consent to refer the dispute to a dispute resolution committee, no further steps can be taken in this process.

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When a voluntary dispute resolution process exists in the bylaws and is used, the Act provides however that:

- an admission, statement, document or record made only for the purposes of the voluntary dispute resolution process may not be used in court, in an arbitration or in any other proceeding;
- a voluntary dispute resolution process must not:
  - require the person to use the process;
  - confer on a person or body the power to make a binding decision; and
  - affect a person's powers, duties, or rights including the right to sue or arbitrate.

It is the role of the dispute resolution committee to attempt to help disputing parties voluntarily end the dispute.

**References:**

Sections of the Act: 25, 27, 35, 36, 39-58, 71, 74, 91-110, 114,  
119, 124-128, 163-173, 175-189

Sections of the Regulations: 18.1

Sections of Standard Bylaws: 15, 29