



Instruction Guide 26

Arbitration

Important Notice : This Instruction Guide has been prepared by the Superintendent of Real Estate to provide information about the *Strata Property Act* (the “Act”). This is only a guide to certain parts of the Act and Regulations. Please consult the Act and Regulations to determine the complete and precise requirements of the Act and Regulations. In addition, please remember when reviewing statements about the Standard Bylaws, that they may not apply until January 1, 2002 and even when they do apply, they may have been amended or removed if the strata corporation has filed bylaw amendments in the Land Title Office. Please check all filed bylaw amendments to determine whether and how the Standard Bylaws may have been amended.

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1. **Parties to an Arbitration**

The following parties can refer a dispute to arbitration:

- the strata corporation may refer a dispute with an owner or tenant;
- an owner or tenant may refer a dispute with:
 - the strata corporation; or
 - another owner or tenant.

2. **Types of Disputes That May Be Arbitrated**

Disputes relating to the following matters may be referred to arbitration for resolution:

- interpretation or application of the Act, Regulations, bylaws or rules;
- the common property or common assets;

- the use or enjoyment of a strata lot;
- money owing, including fines under the Act, Regulations, bylaws, or rules;
- an action or threatened action or decision by the strata corporation including the strata council in relation to an owner or tenant;
- the exercise of voting rights by a person who holds 50% or more of the votes, including proxies at a general meeting.

Disputes may not be referred to arbitration if:

- the arbitration provisions of the Residential Tenancy Act apply to the dispute;
- all parties agree that the Commercial Arbitration Act will apply to the dispute and the arbitration provisions of the Residential Tenancy Act do not apply;
- a court proceeding regarding the dispute has been started.

3. **Choosing an Arbitrator**

The Act provides the following methods for choosing an arbitrator:

- the parties can agree on an arbitrator by one of the parties:
 - suggesting an arbitrator to which the other party agrees;
 - suggesting the names of a number of arbitrators from which the other party chooses an arbitrator;
 - suggesting a method for appointing an arbitrator to which the other party agrees;
- if the parties cannot agree on an arbitrator or method for choosing an arbitrator the parties may each choose an arbitrator and the arbitrators will:
 - choose a third arbitrator to act with them and to chair the panel; or
 - name a third person to be the sole arbitrator.

A list of arbitrators may be obtained from:

- British Columbia Arbitration and Mediation Institute;
- Better Business Bureau;
- Strata Owner Association.
[See Appendix 1 for a list of the organizations and associations.]

If the parties agree on a method for appointing an arbitrator or agree that the two arbitrators will either choose a third arbitrator or name a person to be the sole arbitrator, specific consent of the parties is required before any of the following parties may be appointed as an arbitrator:

- an owner, tenant or occupant in the strata corporation;
- the strata manager of the strata corporation;
- an employee of the strata corporation.

4. **Beginning an Arbitration**

An arbitration is begun by one party giving the other party a “Notice Beginning Arbitration” (Form L) which sets out:

- the details of the dispute;
- the proposed remedy or resolution of the matter;
- one of the following proposals:
 - the name of one arbitrator;
 - the names of a number of arbitrators from which the parties can choose an arbitrator;
 - a method for appointing an arbitrator.

The party receiving the Form L must provide the party beginning the arbitration with a “Notice of Reply” (Form M) within two weeks of receiving the Form L.

The Form M must indicate whether the party:

- agrees with the proposed arbitrator, one of the choices for arbitrator, or the method to appoint the arbitrator; or
- disagrees with the proposals, in which case the party can propose:
 - the name of one arbitrator;
 - the names of a number of arbitrators from which the parties can choose an arbitrator;
 - a method for appointing an arbitrator.

If the Form M indicates disagreement with the arbitrator proposals contained in the Form L, the party beginning the arbitration must give the other party a “Notice Responding to Reply” (Form N) within one week of receiving the Form M.

The Form N must indicate whether the party who began the arbitration process:

- agrees with the proposed arbitrator, one of the choices for arbitrator, or the method to appoint the arbitrator set out in the Form M; or
- rejects the proposed arbitrator, choice or arbitrators, or method to appoint an arbitrator.

If the Form N rejects the choices provided by the other party, within one week, each party may choose one arbitrator and the two arbitrators will either:

- choose a third arbitrator to act with them and to chair the panel; or
- name a third person to be the sole arbitrator.

5. **Failure to Respond or Appoint an Arbitrator**

An application can be made to the Supreme Court for an order appointing an arbitrator if:

- the party receiving the form does not respond; or
- the parties are unable to resolve the matter of an arbitrator within six weeks from the date the Form L was given to the other party.

6. **Serving Notice of Arbitration on the Strata Corporation**

The strata corporation must be served with the forms relating to an arbitration in one of the following ways:

- leaving it with a strata council member;
- mailing it to the strata corporation's most recent mailing address on file at the Land Title Office;
- faxing it to the strata corporation at the strata corporation's fax number;
- faxing it to a strata council member if the strata council member has provided the fax number for the purposes of receiving the notice;
- putting it in the mail slot or box used by the strata corporation for receiving notices.

If a form has been served on the strata corporation in any manner other than leaving it with a strata council member, the strata corporation is deemed to have received the form four days after the form was mailed, faxed, or put in the mail slot or box.

7. **Serving Notice of Arbitration by the Strata Corporation**

The strata corporation can serve forms relating to an arbitration in one of the following ways:

- if the person has provided an address for receiving notices which is outside the strata development by:
 - personally leaving it with the person;
 - mailing it to the address provided by the person.
- if the person has not provided the strata corporation with an address for receiving notices that is outside the strata development by:
 - personally leaving it with the person;
 - leaving it with an adult occupant of the person's strata lot;
 - putting it under the door of the person's strata lot;
 - mailing it to the person at the address of the strata lot;
 - putting it through a mail slot or in a mail box used by the person for receiving mail;
 - faxing to a fax number provided by the person.

If a form has been served on a person other than by leaving it with that person, the person is deemed to have received the form four days after the form was mailed, left with an adult at the strata lot, put under the door, or in a mail slot or box, or faxed.

8. **Calculating Notice Periods**

If notice of an arbitration is served on a strata corporation by mailing, faxing, or putting it in the mail slot or box, the strata corporation is not considered to have received the notice until four days after the event. For example, if the notice was faxed on Monday, the strata corporation is deemed to have received it on Friday.

Under the Interpretation Act, if the reference to time does not include phrases such as "clear" days or weeks, or "at least" in reference to days or weeks, the time must be calculated by excluding the first day and including the last day of the period. Another way of thinking about the days that must be excluded is to think that nothing can happen on those days.

Thus, when calculating the time periods relating to an arbitration, the first day of the time period should not be counted. In other words, the day the notice is given, or is deemed to be received cannot be counted as one of the days.

9. **Authorization from Strata Lot Owners for an Arbitration**

Before a strata corporation can begin an arbitration in the name of all of the strata lot owners, (except the strata lot owner who is a party to the arbitration)

- the arbitration must be authorized by a resolution approved by a $\frac{3}{4}$ vote;
- the strata lot owner who is a party to the arbitration is not an eligible voter.

A strata corporation can begin an arbitration on behalf of one or more owners about matters affecting only their strata lot if:

- it obtains the written consent of those owners; and
- the arbitration is authorized by a resolution passed by a $\frac{3}{4}$ vote.

10. **Notice to Strata Lot Owners of an Arbitration**

The strata corporation must notify strata lot owners as soon as feasible once the strata corporation is served with notice of an arbitration.

11. **The Arbitration Process**

The arbitrator:

- must advise the parties, before the arbitration hearing, of the possibility of a mediated settlement;
- may, before the arbitration hearing, provide notice to a person who is not a party who the arbitrator feels may be directly affected by the issues considered at the arbitration;
- must hold the arbitration hearing as soon as possible at a location in or near the strata corporation's premises;
- may conduct the arbitration hearing in the manner the arbitrator considers appropriate.

The arbitration:

- is open to all owners or tenants, unless all parties to the arbitration agree that the hearing should be held in private;

- may consist of an exchange of written statements or any other procedure, as long as all parties agree.

The parties to an arbitration:

- may be represented at any stage by another person including a lawyer;
- before the arbitration hearing, must submit a written statement to the arbitrator describing the nature of the dispute and the evidence they intend to call.

During the arbitration proceedings:

- each party is allowed to present and rebut evidence;
- each party must, when ordered by the arbitrator, be examined by the arbitrator, and produce all relevant records required by the arbitrator;
- a person, not a party to the dispute, may give evidence only if they are requested to do so by a party to the dispute and are willing to give evidence;
- the arbitrator may require a party or witness to give evidence on oath or affirmation;
- the arbitrator may admit evidence that he or she considers relevant, even if the evidence would not be admissible in a court.

12. **Referring Arbitration Matters to Court**

A court may hear a dispute that has been referred to arbitration. However, a party to the arbitration may apply to the court for an order staying the court proceedings.

The court may stay its proceeding after considering the following:

- the legal and factual complexity of the dispute;
- the suitability of the intended arbitrator;
- the comparative expense and delay of the court proceedings and the arbitration;
- the interest of any other parties;
- the likelihood that all parties to the arbitration will cooperate to do all things necessary for the proper conduct of the arbitration.

13. **Allocation of the Costs of An Arbitration**

The parties to an arbitration must pay their own costs and must equally contribute to the fees of the arbitrator unless:

- the parties to the arbitration have entered an agreement with respect to costs; or
- the arbitrator makes an order for costs either:
 - at the time of the decision;
 - as a consequence of a request by one of the parties made within thirty days of being notified of the decision.

If the arbitration preceded in the name of all strata lot owners:

- all strata lot owners (except the strata lot owner who is a party to the arbitration) must contribute to the expense of the arbitration;
- the strata lot owners must contribute to the expense according to their unit entitlement:
 - unless another method of contributing to the common expenses has been unanimously agreed to;
 - except that the unit entitlement of the strata lot owned by the strata lot owner who is a party to the arbitration should not be used in the calculation.

If the arbitration proceeded in the name of only some of the strata lot owners:

- only those strata lot owners on whose behalf the arbitration proceeds must contribute to the expense of the arbitration;
- the owners should contribute to the expenses, based on their unit entitlement:
 - unless another method of contributing to the common expenses has been unanimously agreed to;
 - using only the unit entitlement of the strata lots owned by the strata lot owners in whose name the arbitration proceeded.

The costs of defending an arbitration are shared by all strata lot owners (except the strata lot owner who is a party to the arbitration):

- on the basis of unit entitlement (unless another method of contributing to the common expenses has been unanimously agreed to).

14. **Arbitration Decisions**

The arbitrator may:

- make whatever decision he or she considers just having regard to the Act, Regulations, bylaws and rules;
- order a party to do something;
- order a party to refrain from doing something;
- order a party to pay money as damages.

The arbitrator's decision must:

- be in writing;
- include reasons;
- be signed by the arbitrator.

An arbitrator may vary a decision within four weeks of the date of the decision to correct a clerical, typographical, or similar type of error or omission.

An arbitrator's decision is final and binding except that:

- it may be reviewed under the Judicial Review Procedure Act;
- it may be appealed to the Supreme Court within thirty days of receiving the decision.

All strata lot owners are responsible for a judgment against the strata corporation and must pay the judgment according to their unit entitlement (unless another method of contributing to the common expenses has been unanimously agreed to).

15. **Limits on a Strata Lot Owner in Relation to an Arbitration**

If the strata corporation initiated an arbitration proceeding against a strata lot owner, or the strata lot owner initiated an arbitration proceeding against the strata corporation, that strata lot owner:

- is not liable to contribute to the legal costs that the strata corporation must pay;
- does not have a right to information or documents relating to the arbitration including legal opinions;
- does not have a right to attend those portions of any general or council meeting at which the arbitration is discussed;
- is not required to contribute to the funds paid to the strata lot owner by the strata corporation in settlement of the matter.

16. **Appeals of an Arbitration Decision**

A party to an arbitration may appeal the arbitrator's decision to the Supreme Court on any question of law within thirty days after receiving the decision if:

- all parties consent to the appeal; or
- the court grants leave to appeal because:
 - the decision is sufficiently important to justify court intervention, and the determination of the question of law may prevent a miscarriage of justice;
 - the question of law is of importance to some class or body of persons of which the applicant is a member;
 - the question of law is of general or public importance.

17. **Enforcement of an Arbitration Decision**

An arbitration decision and order for costs may be filed:

- in Supreme Court; or
- in Provincial Court (Small Claims Court) if:
 - the amount claimed or the value of the personal property or services is within the monetary jurisdiction of the court (\$10,000); and
 - the action or decision is in respect of:
 - ◆ debt or damages;
 - ◆ recovery of personal property;
 - ◆ specific performance of an agreement relating to personal property or services;
 - ◆ relief from opposing claims to personal property.

The filing of an arbitration decision and order for costs in either Supreme or Provincial Court:

- has the same effect as an order of that court;
- allows the parties to enforce the decision and take all proceedings as if it was an order of that court.

References:

Sections of the Act: 60, 63, 166, 167, 171, 172, 175-189

Appendix 1

Arbitration and Mediation Referrals

Arbitration / Mediation Institute

British Columbia Arbitration and Mediation Institute
Suite 500 – 1311 Howe Street
Vancouver, BC V6Z 2P3
Phone: (604) 736-6614
Toll Free in BC: 1-877-332-2264
Fax: (604) 736-9233
Email: info@bcami.com
<http://www.bcami.com>

Better Business Bureau Offices:

Better Business Bureau of Mainland British Columbia
404- 788 Beatty Street
Vancouver, BC V6B 2M1
Phone: (604) 682-2711 9:00 - 4:00
Fax: (604) 681-1544
Email: bbmail@bbvan.org
<http://www.bbvan.org>

Better Business Bureau of Vancouver Island
220 – 1175 Cook Street
Victoria, BC V8V 4A1
Phone: (250) 386-6348
Fax: (250) 386-2367
Email: info@bbvanisland.org
<http://www.bbvi.ca>

Strata Owners' Associations:

Condominium Home Owners' Association of B.C.

In the Lower Mainland:

202 – 624 Columbia Street
New Westminster, BC V3M 1A5
Phone: 604-584-2462
Toll Free: 1-877-353-2462
Fax: 604-515-9643

In the Okanagan:

129 – 3115 Skaha Lake Road
Penticton, BC V2A 6G5
Phone: 250-492-3552
Toll Free: 1-877-353-2462
Fax: 250-492-3552

E-mail: office@choa.bc.ca
Web Site: www.choa.bc.ca

Pacific Condominium Association of British Columbia

15595 – 24th Avenue
Surrey, BC V4A 2J4
Phone: 604-538-8888
Fax: 604-538-0237
E-mail: paco@condohelp.org
Web Site: www.condohelp.org

Vancouver Island Strata Owners Association

Box 601, 185 – 911 Yates Street
Victoria, BC V8V 4Y9
Phone: 250-920-0222
E-mail: info@visoa.bc.ca or membership@visoa.bc.ca
Web site: www.visoa.bc.ca