

APPENDIX A

List of Recommendations

Sections—general

1. *The Strata Property Act and the Strata Property Regulation should continue to contain provisions enabling the creation and operation of sections. (55–60)*

Sections—qualifying conditions

2. *The Strata Property Act should continue to allow sections only for the purpose of representing the different interests of (a) owners of residential strata lots and owners of nonresidential strata lots, (b) owners of nonresidential strata lots, if they use their strata lots for significantly different purposes, or (c) owners of different types of residential strata lots. (60–62)*

Sections—creation

3. *The Strata Property Act should continue to permit an owner-developer to create sections. (62–65)*

4. *If an owner-developer creates sections at the time a strata plan is filed in the land title office, then the Strata Property Act should provide that, on or before the date of the strata corporation's second annual general meeting, the sections comprising the strata corporation may, by resolutions passed by a majority vote of each of the sections, cancel the sections. (65–67)*

5. *The Strata Property Act should provide that, if a section is created after a strata corporation's first annual general meeting, then the bylaws must set out the date of the first annual general meeting of the section. (66–68)*

6. *Section 193 of the Strata Property Act should be amended to clarify that creation or cancellation of a section requires a resolution passed by a 3/4 vote in all cases, despite the provisions of section 128 (1) (b) and (c), which allow amendments to a bylaw to be approved by a resolution passed by a voting threshold other than a 3/4 vote in the case of a strata plan composed entirely of nonresidential strata lots or in the case of a strata plan composed of both residential and nonresidential strata lots. (68–69)*

7. *Special forms should be prescribed under the Strata Property Act for the creation, amendment, and cancellation of a section. (69–70)*

8. *Section 193 (5) of the Strata Property Act should be repealed and section 250 (2) of the Strata Property Act should be amended to provide for the categorization of filings addressing the creation, amendment, and cancellation of sections. (70–72)*

Sections—powers and duties

9. *The Strata Property Act should provide that bylaws respecting sections cannot provide for the control, management, maintenance, use, and enjoyment of common property. (72–75)*

10. *The Strata Property Act should provide that bylaws respecting sections can provide for the control, management, maintenance, use, and enjoyment of common assets of the section or a strata lot of the section. (75–76)*

11. *Section 194 (2) (f) of the Strata Property Act should be retained as it is currently worded. (76–77)*

12. *Section 194 (4) of the Strata Property Act should be amended by striking out “only” and by adding as a new paragraph (c) the words “for any other purpose in the discretion of the section.” (77–79)*

13. *The Strata Property Act should provide that a mortgagee may give a Mortgagee’s Request for Notification to a section, as well as to the strata corporation. (78–80)*

14. *The Strata Property Act should require a section to file its correct mailing address, and any changes to that address, in the land title office. (79–81)*

Sections—governance

15. *The Strata Property Act should contain an express declaration that the act applies to sections. (80–82)*

16. *The Strata Property Act should require a section to provide an information certificate under section 59 for matters concerning the section on request by an owner, a purchaser, or a person authorized by an owner or a purchaser. (82–84)*

17. *The Form B (information certificate) for strata corporations should be modified to ask (a) does the strata corporation have sections, (b) if so, is this strata lot part of a section, and (c) if yes, which section does this strata lot belong to. (84–85)*

18. *The Strata Property Act should require a section to provide any information necessary to complete a certificate of payment under section 115 of the act within three days of a request from its strata corporation. (85–87)*

19. *A new form under the Strata Property Act should be created for the section to provide the requisite information to the strata corporation. (85–87)*

Sections—finances

20. *The Strata Property Act should enable sections to file a lien under section 116 of the act. (87–89)*

21. *If a strata corporation and a section both file liens under section 116 of the Strata Property Act with respect to the same strata lot, then the strata corporation's lien should rank in priority ahead of the lien of the section. (89–91)*

22. *A section's lien should rank in priority to every other lien or registered charge except (a) to the extent that the strata corporation's lien is for a strata lot's share of a judgment against the strata corporation, (b) if the other lien or charge is in favour of the Crown and is not a mortgage of land, or (c) if the other lien or charge is made under the Builders Lien Act. (91–92)*

23. *Section 112 of the Strata Property Act should be amended to provide that before a strata corporation or a section registers a lien under section 116 of the act against a strata lot, then that strata corporation or section must give notice, as the case may be, to the section or strata corporation. (92–94)*

24. *Consequential amendments should be made to sections 112 to 118 of the Strata Property Act to include sections. (93)*

25. *The Strata Property Act should expressly require a section within a strata corporation to have a separate budget. (94–96)*

26. *The Strata Property Act should provide that operating funds, contingency-reserve-fund funds, and special-levy funds must be accounted for separately and maintained in separate accounts in a financial institution for the strata corporation and for each section. (96–98)*

27. Section 192 (a) of the Strata Property Act should be amended by inserting after “bylaws that provide for the creation and administration of each section” the words “provided that the administration of expenses relates solely to the section.” **(98–99)**

Sections—cancellation

28. The Strata Property Act should require that a resolution to cancel a section must be approved by sectional 3/4 votes in each other existing section of the strata corporation. **(99–102)**

29. The Strata Property Regulation should require that the resolution to amend the bylaws to provide for the cancellation of a section must set out all of the following:

(a) any funds in the operating fund and contingency reserve fund for common expenses of the section have been transferred or disposed of; (b) any court proceeding or arbitration involving the section has been settled or discontinued; (c) any contracts in the name of the section have been assigned or terminated; (d) any land or other property held in the name of or on behalf of the section has been disposed of in accordance with the act; (e) any lien filed under section 116 of the act has been transferred or discharged; (f) any other charges, interests, liabilities, or assets of the section have been transferred or disposed of. **(102–07)**

Types—legislative enabling provision or definition

30. The Strata Property Act should contain a provision that expressly enables the creation of types of strata lots. **(120–21)**

Types—creation

31. The Strata Property Act should require, for a strata corporation to create a type of strata lot: (a) the strata corporation must hold an annual or special general meeting to consider the creation of the type; (b) the notice of meeting must include a resolution to amend the bylaws to provide for the creation of each type; and (c) the resolution referred to in (b) must be passed (i) by a 3/4 vote by the eligible voters of the strata lots comprising the type identified in the bylaw, and (ii) by a 3/4 vote by all the eligible voters in the strata corporation. **(121–22)**

32. The vote authorizing the creation, amendment, or cancellation of a type should require a resolution passed by a 3/4 vote in all cases, despite the provisions of section 128 (1) (b) and (c), which allow amendments to a bylaw to be approved by a resolution passed by a voting threshold other than a 3/4 vote in the case of a strata plan com-

posed entirely of nonresidential strata lots or in the case of a strata plan composed of both residential and nonresidential strata lots. (121-23)

33. If a strata corporation allocates expenses by types, then amendments to the strata corporation's bylaws concerning the allocation of an expense to a type must be approved at an annual general meeting or a special general meeting by both a resolution passed by a 3/4 vote of the strata corporation and a resolution passed by a 3/4 vote of the type. (121-23)

34. The Strata Property Act should allow an owner-developer to create types of strata lots at the time the strata plan is deposited by filing in the land title office bylaws that provide for the creation of each type. (123-24)

Types—sharing operating expenses

35. The Strata Property Regulation should continue to allow operating expenses (expenses that usually occur either once a year or more often than once a year) to be shared by types of strata lots. (124-25)

36. The Strata Property Regulation should not allow operating expenses (expenses that usually occur once a year or more often than once a year) to be shared by types of strata lots, if the expense is in relation to an item that does not exclusively benefit the type. (125-26)

37. Section 105 of the Strata Property Act should be amended to provide that, if a strata corporation has adopted a bylaw establishing types of strata lots, the strata corporation must carry out a year-end reconciliation and if, based on that reconciliation, there is a surplus or a shortfall with respect to a contribution to the operating fund that was shared only by owners of strata lots of that type, then the surplus or shortfall must be dealt with as follows: (a) in the case of a surplus, the surplus must be used to reduce the total contribution to the next fiscal year's operating fund by owners of strata lots of that type; (b) in the case of a shortfall, the shortfall must be eliminated during the next fiscal year by owners of strata lots of that type. (126-27)

Types—sharing capital expenses

38. The Strata Property Regulation should not allow capital expenses (expenses that occur less frequently than once a year) to be shared by types of strata lots, even if the capital expense relates to an item that benefits only the type of strata lot. (128-30)

39. The Strata Property Act should not allow a type of strata lot to have a contingency reserve fund. (130-32)

40. *The Strata Property Regulation should not allow capital expenses (expenses that usually occur less frequently than once a year) to be shared by types of strata lots, if the expense is in relation to an item that does not exclusively benefit the type. (132)*

Types—powers, duties, and governance

41. *The Strata Property Act should not authorize bylaws respecting types to provide for the control, management, maintenance, use, and enjoyment of the strata lots, common property, and common assets of the type or adjacent to the type. (133–34)*

42. *The Strata Property Act should not require that bylaws respecting types provide for the creation of a type executive. (134–35)*

Types—cancellation

43. *The Strata Property Act should require, for a strata corporation to cancel a type of strata lot: (a) the strata corporation must hold an annual or special general meeting to consider cancellation of the type; (b) the notice of meeting must include a resolution to amend the bylaws to provide for the cancellation of the types; and (c) the resolution referred to in (b) must be passed (i) by a 3/4 vote by the eligible voters of the strata lots comprising the type identified in the bylaw, and (ii) by a 3/4 vote by all the eligible voters in the strata corporation. (135–36)*

Phases—general

44. *The Strata Property Act should continue to enable the development of strata properties in phases. (174–75)*

Phases—applying to deposit a phased strata plan

45. *The Strata Property Act should continue to require an owner-developer to file a Phased Strata Plan Declaration as a condition to depositing a phased strata plan. (175–76)*

46. *The Strata Property Act should continue to require an owner-developer to obtain the approval of an approving officer to a phased strata plan. (177–78)*

47. *The Strata Property Act should provide that an approving officer's approval of a Phased Strata Plan Declaration expires after two years unless the first phase is deposited before that time. (178–80)*

48. Section 228 of the Strata Property Act should be amended to provide that despite section 510 of the Local Government Act the deposit of a phase of a phased strata plan does not require provision of park land or payment for parks purposes. **(180–81)**

Phases—changing circumstances

49. The Strata Property Act should not be amended to allow a strata-lot owner or prospective strata-lot owner, a strata corporation, or an approving officer to apply to the supreme court for a mandatory injunction requiring the owner-developer under a phased strata plan to complete the phased strata in accordance with the Phased Strata Plan Declaration. **(182–84)**

50. The Strata Property Act should require an owner-developer to obtain the consent of the affected strata corporation to an election to extend the time to proceed, an election not to proceed, or other amendments to a Phased Strata Plan Declaration. **(184–85)**

51. The Strata Property Act should require that a strata corporation's consent to an amendment to a Phased Strata Plan Declaration should not be unreasonably withheld. **(184–86)**

52. The Strata Property Act should require that a strata corporation's consent to an amendment to a Phased Strata Plan Declaration should be required to be expressed by (a) a resolution of the strata corporation passed by a 3/4 vote and (b) the filing in the land title office of a Certificate of Strata Corporation in the prescribed form stating that the resolution referred to in paragraph (a) has been passed. **(184–86)**

53. Section 236 of the Strata Property Act should be amended to allow a strata corporation to apply to the supreme court for a declaration that the owner-developer be deemed to have elected not to proceed even if no order that the owner-developer complete the phase by a set date has been made. **(187–88)**

54. Section 232 of the Strata Property Act should be amended to provide that (a) an owner-developer may amend a Phased Strata Plan Declaration to extend the time for making an election to proceed with the next phase without applying to an approving officer for approval of the amendment and (b) an owner-developer must not amend a Phased Strata Plan Declaration to extend the time for making an election to proceed (i) more than once or (ii) for more than one year from the date stated in the declaration, except in accordance with an order of the supreme court. **(188–90)**

Phases—governance and phased strata plans

55. A new, freestanding regulation should be adopted that expressly sets out the owner-developer's obligations from part 3 of the Strata Property Act upon deposit of a phase other than the first phase of a phased strata plan, which are currently incorporated by reference in section 13.4 of the Strata Property Regulation. **(190–92)**

56. Section 230 of the Strata Property Act, which requires a strata corporation to hold an annual general meeting during the six-week period that begins on the earlier of the date on which 50% plus one of the strata lots in the new phase have been conveyed to purchasers and the date that is six months after the deposit of the new phase, should be repealed. Consequential amendments should be made to sections 13.2 to 13.6 of the Strata Property Regulation. **(192–97)**

57. Section 13.5 of the Strata Property Regulation, which requires the election of two additional council members from the owners of a new phase at the phase annual general meeting that must be held after the deposit of a subsequent phase in the land title office, should be repealed. **(198–200)**

58. The Strata Property Regulation should require an owner-developer to turn over to the strata corporation the records listed in section 20 (2) (a) of the Strata Property Act for a phase other than the first phase of a phased strata plan by no later than 90 days following the deposit of that phase in the land title office. **(200–01)**

59. Section 13.3 (2) of the Strata Property Regulation should restrict the ability of a phased strata property to amend bylaws dealing with the keeping or securing of pets, the restriction of rentals, the age of occupants, or the marketing activities of the owner-developer which relate to the sale of strata lots in the strata plan until the earliest of the following: (a) the annual general meeting held following the deposit of the final phase; (b) an election not to proceed is made under section 235 or 236 (2) of the act; (c) the strata corporation obtains the written consent of the owner-developer; (d) the owner-developer is not in compliance with the dates for the beginning of construction of each phase as set out in the Phased Strata Plan Declaration or amended Phased Strata Plan Declaration; (e) the date that is six months after the date of completion of construction disclosed in section 2 (c) of the original Phased Strata Plan Declaration. **(202–05)**

60. The Phased Strata Plan Disclosure form should be amended to require an owner-developer to identify how it intends to designate parking and storage lockers. **(205–07)**

Phases—protecting the financial interests of owners in a phased strata plan

61. *If a strata corporation for a phased strata plan has adopted its own budget, then the Strata Property Regulation should require an owner-developer, after the deposit of a phase subsequent to the first phase, to prepare an interim budget that is only applicable to the strata lots in that subsequent phase. (207–12)*

62. *The Strata Property Regulation should be amended to require a strata corporation to account separately for the revenue and expenses during the interim-budget period after deposit of a phase subsequent to the first phase in the land title office. (212–13)*

63. *Section 223 of the Strata Property Act should continue to require an approving officer's approval of security for common facilities. (214–15)*

64. *Section 223 of the Strata Property Act should be amended to provide that an approving officer may (a) charge a reasonable fee to the owner-developer for approving the Phased Strata Plan Declaration and (b) require the owner-developer to provide an estimate of the cost of common facilities that are to be constructed in a phase other than the first phase, or constructed on a separate parcel, which estimate must be verified by the certificate of a registered architect or professional engineer. (215–16)*

65. *Despite the Strata Property Regulation, the owner-developer should be required to ensure that the term of any insurance policy entered into by or on behalf of a phase subsequent to the first phase in a phased strata plan continues for at least four weeks after the subsequent phase is deposited in the land title office. (216–19)*

66. *The Strata Property Act should provide that the owner-developer should be considered to have an insurable interest in any property insured under an insurance policy that continues in effect for at least four weeks after the subsequent phase is deposited in the land title office. (219–20)*

67. *The Strata Property Act should provide that, despite the terms of an insurance policy that continues in effect for at least four weeks after the subsequent phase is deposited in the land title office, in making a payment, other than a payment arising from the liability of the strata corporation, under the strata corporation's insurance policy, an insurer must make the payment (a) to the order of the insurance trustee designated by the bylaws, or (b) if an insurance trustee is not designated, to the order of the strata corporation to be held in trust until paid out under section 157 of the Strata Property Act. (220–21)*

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68. *The Strata Property Act should require an owner-developer to give a strata corporation for a phased strata plan an insurance appraisal for the full replacement value of a new phase no later than 14 days before the deposit of the new phase in the land title office. (221-22)*