

STRATA PROPERTY—2013 UPDATE  
PAPER 4.1

## Strata Property 2013: Borrowing

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## **STRATA PROPERTY 2013: BORROWING**

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### **I. Why Borrow?**

Strata corporations have responsibility for large and complex real estate assets. Like any complex real estate asset, a strata building is sure to require major repair or rehabilitation at some point in its life. However, compared to a similar development with a single owner, a strata development can face serious challenges in pursuing a capital repair project.

The key difficulties for a strata corporation lie in the requirement for democratic decision-making, and in the often limited resources of the owners. Even if decisions can be arrived at about the need for the project, its scope, the design and engineering aspects, and how to carry out the construction work, many strata corporations will falter when it comes to financing.

Enter the lender.

#### 4.1.2

The easiest way to borrow to finance strata capital projects is for each owner to borrow on their own, typically by way of a mortgage against their strata unit, to pay their share of a special levy to finance the project. This usually isn't possible for all owners.

Beginning during the leaky condo crisis in the Lower Mainland in the 1990s, the Homeowner Protection Office made loans available to owners on attractive terms, with repayment deferred to sale of the unit. Thousands of major capital projects were undertaken between 1999 and 2010 with HPO assistance in the form of loans to owners.

With the end of the HPO loan program in July of 2009, private sector lenders have become more active in pursuing loans for strata corporation capital projects. Loans to condominium corporations (as opposed to loans to individual owners) have been fairly common in other provinces for several decades, but were relatively rare in British Columbia until recently. The growth in activity in this area poses challenges for lawyers advising strata corporations and lenders, in large measure because of choppy alignment between lending industry norms, strata corporation management practices, and *Strata Property Act* provisions governing borrowing and expense allocation.

## II. Relevant Strata Property Act Provisions and Principles

The starting points for any commercial loan transaction are:

- the capacity and authorization of the borrower to enter into the transaction; and
- the security granted to the lender for the loan.

Capacity of a strata corporation to borrow and grant security. In the case of a strata corporation, the capacity to borrow rests on section 2 of the *Strata Property Act*, which confers on a strata corporation the power and capacity of a natural person of full capacity, but subject to any limitation under the Act.

Section 111 contains such a limitation, permitting borrowing only after approval by  $\frac{3}{4}$  vote resolution of the owners.

The security that a strata corporation can grant is somewhat more opaque than its borrowing powers generally. Sections 78 through 82 of the Act contain limitations on a strata corporation's acquisition and disposal of assets, including both real and personal property. A strata corporation may not mortgage common property (section 81), but may mortgage real estate that is not common property with  $\frac{3}{4}$  vote authorization (section 79) and may grant a security interest in personal property owned by the strata corporation, again with  $\frac{3}{4}$  vote authorization (section 82(2)).

The relationship between subsection 111(1), which confers a general authority to grant security for borrowed funds, subsection 111(2), which speaks to specific forms of security, and sections 79 and 82, which govern dispositions of real and personal property generally, is somewhat problematic.

Section 111, parsed strictly, suggests that as long as a loan is approved by  $\frac{3}{4}$  vote, the strata corporation can secure the loan without the security being included in the  $\frac{3}{4}$  vote resolution, so long as it does not mortgage common property. It is unclear whether this strict reading corresponds with the legislative intention.

Furthermore, it is unclear whether section 111 confers authority to grant security independent of sections 79 and 82. Mortgaging real estate owned by the strata corporation (such as a caretaker suite that is a separate strata lot) is governed by both sections 79 and 111(2)(a). Granting a security interest in chattels owned by the strata corporation is governed by both subsection 82(2) (taking account of the definition of "dispose" in the *Interpretation Act*) and subsection 111(1). The question of how these sections interact has not been before the courts, but if the authority in section 111 is independent of sections 79 and 82, and if the  $\frac{3}{4}$  vote requirement in section 111 does not apply to the security, then a mortgage or security interest granted to secure a loan without  $\frac{3}{4}$  vote authorization may nonetheless

be enforceable. However, it is unlikely that counsel for a strata corporation would give an opinion that security is validly authorized without a  $\frac{3}{4}$  vote pursuant to sections 111 and 79 or 82.

Common expenses. Common expenses under the *Strata Property Act* include all expenses required to meet any obligation of the strata corporation. Anything payable to a lender pursuant to a commitment letter or loan agreement falls within this category, including:

- principal repayments;
- interest;
- loan commitment fees or commissions payable to brokers; and
- legal fees of the lender to be paid by the strata corporation.

Under section 99, common expenses must be allocated to all owners by unit entitlement except in specified (and unusual) circumstances.

### **III. Lender Considerations**

A lender advancing funds to a strata corporation will have two key considerations: the ability of the strata corporation to service the debt, and the security.

#### **A. Covenant of the Strata Corporation**

Key to any loan is the borrower's ability to repay. Strata corporations are among the least likely borrowers to default because of the significant real estate interests of the owners underpinning a strata corporation as well as section 166 discussed below. Nonetheless, from a lender's point of view, a strata corporation work-out would be profoundly unattractive, with the risk of unruly owners' meetings, dysfunctional strata councils, and court-appointed administrators. To assess the strength of a strata corporation's covenant, a lender can be expected to scrutinize its financial statements and management before approving a loan.

The owners of strata lots are also implicated by the strata corporation's covenant to pay, despite the fact they have not covenanted directly with a lender. Section 166 makes the owners of strata lots liable for a judgment against the strata corporation, with each strata lot's share calculated in accordance with its unit entitlement. This has been interpreted as making the owners jointly and severally liable for the entire amount of the judgment: *Strata Plan VIS4534 v. Seedtree Water Utility Co.*, 2006 BCSC 73 [in chambers]. On this interpretation, a lender can obtain judgment against any individual owner pursuant to section 166 for the entire amount owed by the strata corporation. However, a lender should be cautious in relying on *Seedtree*. The judgment may not withstand appellate scrutiny in a case where one owner is being pursued for a large judgment against a very large strata corporation (in *Seedtree*, there were only four owners).

It seems doubtful that the legislature intended section 166 to describe joint and several liability. The competing view is that subsections 166(1) and (2) taken together are a clumsy attempt to describe several liability in plain language. This would not be the first time plain language drafting in the Strata Property Act has had pernicious effects, as witness the many years of litigation to determine how the term "significantly unfair" in section 164 relates to the well-defined and considered concept of oppression.

#### **B. What Strata Corporation Assets can be Charged to Secure a Loan?**

Strata corporation assets available to secure a loan separate into three broad categories: real property held by the strata corporation; liquid assets such as the operating fund and the contingency reserve fund; and accounts receivable.

## **1. Strata corporation bank accounts.**

On default, a strata corporation's lender will want quick recourse to the strata corporation's cash assets, i.e. the operating fund and contingency reserve fund.

These funds fall within the definition of "common assets" under the *Strata Property Act*, being "personal property held by or on behalf of" the strata corporation. They are held in the name of the strata corporation but according to section 66, they are owned by the strata lot owners as tenants in common, in shares determined by the schedule of unit entitlement.

It may be argued that the spending restrictions in sections 96 and 97, coupled with ownership of the funds by the strata lot owners pursuant to section 66, impress the operating fund and the contingency reserve fund with a trust in favour of the owners. If so, a judgment creditor would not have direct recourse to the funds and would be forced to proceed against one or more owners pursuant to section 166, then execute against the owners' proportionate interests in the operating fund and contingency reserve fund pursuant to those individual judgments. However, this reasoning would render the strata corporation funds vulnerable to other judgments against individual owners as well – a concept clearly contrary to the *Strata Property Act*. It is also noteworthy that, though strata managers hold strata corporation funds in trust for the corporation pursuant to the *Real Estate Services Act*, there is no provision in the *Strata Property Act* speaking to a trust relationship between the strata corporation and its constituent owners.

In the absence of case law in this area in any Canadian jurisdiction, it seems therefore that a judgment creditor of a strata corporation must have direct recourse to the strata corporation funds on default. It follows that a lender will want to take a security interest in these funds.

Unless subsection 111(1) confers authority independent of section 82 (see above), section 82 will apply. Though the funds are not "acquired" by the strata corporation with owner approval pursuant to subsections 82(1) and 82(3) – rather, they are aggregated by way of strata fees levied pursuant to section 99 or otherwise – it is clear in any event that subsection 82(2) permits a strata corporation to grant a security interest in them, given the definition of "dispose" in the *Interpretation Act*.

## **2. Unpaid strata fees and special levies.**

Subsection 111(2) expressly contemplates an assignment of unpaid strata fees or special levies. As an account receivable is a form of personal property, assigning unpaid fees and levies is a disposition of strata corporation assets to which subsection 82(2) also applies. Therefore, unless section 111 confers independent authority (see above), such an assignment requires  $\frac{3}{4}$  vote approval pursuant to section 82.

## **3. Real estate assets.**

Real property held by the strata corporation is attractive to a lender because realization by way of foreclosure is relatively straightforward and familiar. Common property cannot be mortgaged (section 81) so the only real property available in a loan to a strata corporation is separately titled real estate of which the strata corporation is registered owner: most commonly, a caretaker's suite within the strata complex.

## C. Security

### I. General Security Agreement

Lenders' standard form general security agreements create security interests in all present and after-acquired personal property of the borrower. As discussed above, such a security interest will normally charge the strata corporation operating fund, contingency reserve fund, and accounts receivable including special levy installments and strata fees due from owners.

As noted above, granting a security interest is a disposition of strata corporation assets and must be approved by  $\frac{3}{4}$  vote pursuant to section 82, unless section 111 confers independent authority.

### 2. Assignment of unpaid fees/levies

A general security agreement creating a security interest in all present and after-acquired personal property of the strata corporation normally charges unpaid fees and levies. Nonetheless, a separate assignment may give the lender specific rights beyond those conferred on it by its GSA, such as an obligation on the strata corporation to file liens on direction of the lender. It may also be possible for the lender to direct owners to pay fees and levies directly to the lender or a receiver.

Where the loan is intended to be serviced by special levy installments [NTD: x-ref below], it may be thought that such an assignment covers only the installments on that particular special levy. This would be highly unusual. In most cases a standard lender assignment will cover all strata fees and levy installments owing by owners.

As noted above, an assignment of this nature is a disposition of strata corporation asset and must be approved by  $\frac{3}{4}$  vote pursuant to section 82, unless section 111 confers independent authority.

### 3. Mortgage of common assets

A mortgage of real property (other than common property) held by the strata corporation is attractive security from a lender's standpoint as an asset. Furthermore, becoming a mortgagee of a strata lot has additional advantages such as providing the lender standing pursuant to a number of *Strata Property Act* provisions (e.g. section 174).

A mortgage of such property must be approved by  $\frac{3}{4}$  vote pursuant to section 79 and must be filed with a Form E Certificate of the strata corporation certifying approval. An assignment of rents is typically included.

## D. Realization

A full discussion of realization mechanisms available where a strata corporation defaults is beyond the scope of this paper. In B.C., loans to strata corporations were very rare until recently, so there is no history of either successful or unsuccessful loans. In Ontario, however, which has several decades of history in this area, defaults are extremely rare, even unheard-of. Nonetheless, several issues related to defaults should be considered by both the lender and borrower before a loan to a strata corporation is effected.

Liquid assets. On default, a lender will typically call the loan, demand payment, and then try to access the strata corporation's cash and accounts receivable as quickly as possible. If the lender has an assignment of unpaid special levies and strata fees, it may attempt to direct owners to pay strata fees and levy installments directly to the lender. If they fail to comply, it would need to seek a court order.

#### 4.1.6

Receiver. A lender may seek court appointment of a receiver, again with a view to seizing liquid assets to satisfy the debt. (See the discussion above on the ability of judgment creditors to seize the operating fund and contingency reserve fund.) Though a court appointed receiver may have authority to lien strata lots of owners in default of strata fee or levy installments, it seems unlikely that a lender would be interested in such a piecemeal approach. It would be more typical for a lender to call the loan, accelerate the debt, and seek to execute on large cash deposits in the operating or contingency reserve fund.

If the lender has a perfected security interest in the strata corporation's assets, it stands to reason that it would be entitled to a garnishing order to seize the cash in the strata corporation bank accounts, including those held by a strata manager. The strata corporation may argue that at least some of the funds should be left behind to meet critical obligations of the strata corporation. However, given that section 116 permits the strata corporation to lien a strata lot for an owner's share of a judgment against the strata corporation, in the face of a perfected security interest properly authorized by the owners, it is difficult to see why a court would not release the bulk of funds to the lender, and leave the strata corporation to demand reimbursement from the owners.

Though receivers have been appointed with respect to developers who still hold the bulk of unsold units in a strata development, there does not appear to have been a case in B.C. or Ontario where a strata corporation's creditor sought appointment of a receiver. In one Ontario case, a lender holding mortgages of one or more condominium units sought appointment of a receiver to manage the strata corporation's affairs, though not to repay its loans directly, as it had not lent to the strata corporation. The court demurred because the lender had sought an interim order, but stated in obiter that it may have been possible for the lender to have a receiver appointed in different proceedings: *Re Canada Mortgage & Housing Corp. and York Condominium Corp. No. 46 (1981), 31 O.R. (2d) 514 (Ont. D.C.)*. Such an application would not be necessary in similar circumstances in B.C. nowadays, as the *Strata Property Act* specifically permits a lender with a mortgage of a strata lot to apply for court appointment of an administrator (see following paragraph).

Administrator. If a strata corporation is unable to meet its debt service obligations, chances are its internal affairs are in crisis. Though a lender to the strata corporation has no standing under section 174 to seek appointment of an administrator, one or more owners may very well do so. This may or may not address the interests of the lender, but appointment of an administrator may preclude the concurrent appointment of a receiver on application of a lender.

Judgment against individual owners. According to current judicial interpretation, section 166 of the *Strata Property Act* permits a judgment creditor to proceed against any individual owner for the entirety of its judgment: *VIS4534 Seedtree*, above. As noted, lenders should be cautious in relying on *Seedtree*. If section 166 were ultimately interpreted as describing several, not joint and several, liability, realization via section 166 would require proceedings against each individual owner for that owner's proportionate share of the judgment. Except in very small strata corporations, this would be an unattractive strategy for a lender because of the proliferation of legal proceedings and resulting costs and delays. It is far more likely in most cases that the lender will seek recourse to strata corporation assets to satisfy its judgment, and leave the strata corporation to proceed against individual owners to recover their shares.

## IV. Business Terms of the Loan

Typical loan terms specify a term ranging from one year to 15 years, an amortization period of 5 to 25 years, and a fixed or floating interest rate. The interest rate (if fixed) or the margin over prime rate (if floating) is set only for the initial term and is re-set at the end of the term if the loan is renewed.

Term and amortization. If the term is shorter than the amortization period, there will be a significant balance due at maturity and both lender and strata corporation must turn their minds to how this balance will be either paid or refinanced. If the loan is being serviced through the operating budget, it



is difficult to see how the balance due on maturity can be paid. It is doubtful the balance due would be an eligible operating fund expenditure, because the operating fund is only for common expenses that usually occur annually or more often; and in any case the budget would presumably provide for continued installments on the assumption that the loan is refinanced.

If the loan is being serviced through a special levy payable in installments over the initial term, the last levy installment should include each owner's share of the balance due. In this case, if the loan is renewed or refinanced (particularly if the interest rate changes), it may be simplest to modify the old special levy to eliminate the last installment, and adopt a new special levy to service the new or extended loan with interest over the renewal term. If the loan is not renewed, the strata corporation would have little choice but to demand payment of the final installment from all owners, to meet its obligation to the lender.

If the loan is set up for "optional participation," the balance due on maturity can be very tricky (see below for discussion).

Interest rate. Floating interest rates can be challenging for strata corporations because they need predictable debt service costs to set up either operating budget line items or special levy installments to service the loan. For this reason, most strata loans bear fixed interest, at least for the initial term.

On maturity, where the loan amortization is longer than the initial term, the interest rate (if fixed) or the margin over prime rate (if floating) changes based on current credit market conditions. This is manageable if all owners are contributing to debt service, but creates a significant challenge for "optional participation" loans (see below).

## **V. Strata Corporation Considerations**

### **A. ¾ Vote Approval**

As noted earlier in this paper, key aspects of a loan transaction – the authority to borrow, and any security granted to the lender – are subject to approval by the owners by ¾ vote at a general meeting.

The degree of specificity required in the resolutions is open to debate. Counsel may have difficulty giving the required opinions to the lender if the resolutions adopted by the owners do not refer to a specific lender, loan amount, interest rate, loan term and amortization period, plus the elements of security required. Where possible, authorization should be sought from the owners for a loan from a specific lender based on its commitment letter, which should be presented to the owners.

### **B. Funded In Budget Versus Special Levy**

As noted above, it is possible for a loan to be serviced by operating fund contributions over the term of the loan, or by special levy contributions over a term coinciding with the term of the loan.

If a loan is serviced through the operating budget, debt service will be subject to the owners adopting a budget on an annual with sufficient appropriations to meet the strata corporation's debt service obligations. Failure to adopt such a budget would presumably be a default under the loan agreements. Some lenders go further and require a strata corporation to adopt a resolution or even a bylaw requiring the annual budget to provide for adequate debt service. The legal benefit of such a bylaw to the lender is of course marginal, as the lender has no standing to enforce a strata corporation bylaw (although there is a possible argument a lender could through section 165 as an "interested person")

If the loan is to be serviced by way of a special levy payable by installments, any Form B information certificate issued with respect to a strata lot during the term must show the future installments, pursuant to section 59(3)(d). This cuts both way: assuming the issuer of the Form B completes it

accurately, purchasers will have proper notice of future obligations; but any error or omission acts as an estoppel against the strata corporation pursuant to section 59(5).

Some lenders' standard commitment letters require both a special levy and inclusion in the strata budget. This sounds somewhat nonsensical but may be workable if the annual budget shows levy installments as revenue separate from strata fees, and loan payments as an expense.

### **C. Different Owner Factions – Can You Get A ¾ Vote?**

As in other areas of strata corporation governance, the requirement for a ¾ vote can place a strata corporation in a stalemate if there are multiple options, none of which has the support of three fourths of the owners.

In the context of a major capital project, a quandary may arise where different groups of owners (each comprising more than 25% but fewer than 75% of the strata corporation votes) prefers to fund a major project through a special levy payable immediately, a levy payable in installments, and a loan to the strata corporation retired over several years.

A *Tadeson* order is one possible approach to force the issue (*Tadeson v. Strata Plan NW2644 (1990), 30 R.P.R. (3d) 253 (B.C.S.C.)*). However, this while the court will in the right circumstances order a capital project to be undertaken and impose a special levy (*Ranftl v. Strata Plan VR672, 2007 BCSC 482*), it is difficult to conceive of a situation in which a court would order a strata corporation to enter into a loan transaction.

### **D. “Optional Participation” Loans**

With lenders offering interest rates to strata corporations several points above prime rate, a loan to a strata corporation may not be attractive to owners who have cash available or who can borrow against their real estate assets at considerably lower rates. A solution where each owner has the option either to prepay his/her share of a special levy or to participate in a strata corporation loan facility has great intuitive appeal to both strata corporations and lenders.

However, under the *Strata Property Act* framework, “optional participation” strata corporation loans are much more challenging than conventional loans where all owners contribute to debt service.

The fundamental issue is the *Strata Property Act* requirement that common expenses – which clearly include principal and interest payments to service strata corporation borrowings – be allocated to all owners in proportion to their unit entitlement.

If the loan is serviced through operating fund contributions, there is no mechanism to permit debt service costs to be allocated only to a subset of owners.

If the loan is to be serviced by a special levy, some strata corporations adopt a special levy resolution purporting to give owners the option of pre-paying their share of the levy without interest, or “participating in the loan” and paying a larger total levy by installments to service the loan. This offends the *Strata Property Act* on two counts: (a) depending on the structure of the resolution, it may contravene section 108 by failing to specify a clear date on which the levy is payable; and (b) it has the effect of allocating interest costs, which are a common expense of the strata corporation, to only a subset of owners. Some resolutions go even further, purporting to require “participating owners” to indemnify “non-participating owners” against liability for the loan, or locking owners into paying by installments once they “elect” to do so. Such provisions are clearly unenforceable under the *Strata Property Act*.

A more sophisticated alternative that may satisfy the requirements of the *Strata Property Act* is to impose a special levy equal to the total budgeted cost of the capital project, for the dual purpose of paying project costs and paying debt service costs, specifying both a due date and an interest rate that

applies to unpaid levy contributions after the due date. The interest provision is permitted by subsection 108(4.1), with the maximum rate currently fixed by regulation at 10% per annum. The resolution may contain a direction to the council not to take collection action against non-paying owners so long as they make monthly payments sufficient to pay the levy and interest pursuant to subsection 108(4.1) over a specified term.

In this transaction structure, the loan actually drawn will equal the total project budget less levy installments received by the due date. Following the due date, the strata corporation will have a revenue stream outside the operating budget (payments received from owners who did not pay by the due date, with interest) intended to be sufficient to meet its debt service obligations to the lender. This effectively separates the debt service – an obligation of the strata corporation – from the revenue stream intended to finance the debt service – an obligation only of owners who have not paid the levy by the due date. The strata corporation’s debt service obligations – monthly principal and interest installments payable to the lender – are common expenses, but in the anticipated unfolding of events, they will never need to be allocated to all owners by unit entitlement because they can be satisfied by an separate revenue stream – monthly levy installments received from a subgroup of owners.

It must be noted that any difference between the strata corporation's revenue stream from levy installments and its expense stream for loan installments may leak into the strata corporation’s operating fund. This could arise in many potential circumstances, including the following:

- if the interest rate on the loan (typically fixed at the time of advance, or possibly even at substantial completion of the capital project) is higher or lower than the interest rate specified in the levy resolution (fixed at the time of adoption, many months earlier);
- if the owner begin paying levy installments either before or after strata corporation begins paying loan instalments; and
- if some owners default on levy installments and the strata corporation is forced to take collection measures.

If the revenue stream exceeds the expense stream, the excess interest revenue from owners becomes part of the levy fund pursuant to section 108. If not applied to capital project costs under the levy resolution, this will eventually be refundable to all owners or transferrable to the contingency reserve fund pursuant to subsections 108(5) and 108(6). If the revenue stream falls short, the council will be forced to cover the shortage from the operating fund pursuant to section 98 of the Act, at the expense of all owners.

Because of these complexities, some lawyers and strata managers advise against any “optional participation” loan structure. However, there is no shortage of demand for such loan structures and no shortage of lenders willing to set them up. Counsel must, of course, advise the strata corporation clearly of the impossibility of establishing a hermetic seal between the “participating” owners and the “non-participating” owners in such a structure.

## **VI. Opinions**

Legal counsel acting for the strata corporation must be prepared to give an opinion in relation to the loan, on which the lender and lender’s counsel will rely in advancing the loan. Practitioners unaccustomed to acting in commercial lending transactions may be unfamiliar with the normal opinion requirements and may make the mistake of either resisting where the lender is being reasonable, or acquiescing where the lender is overreaching.

The elements on which borrower’s counsel must be prepared to opine are:

- the capacity of the strata corporation to borrow and grant security;

- the authorization pursuant to the *Strata Property Act* of the agreements and instruments entered into by the strata corporation to effect the loan and security; and
- the valid execution and delivery of the documents by the strata corporation.

Borrowers' counsel in B.C., are not normally expected to opine on enforceability of the lender's loan agreement or security. As well, it is improper for counsel to be asked to opine on factual matters related to the borrower's affairs. The lender should satisfy itself on such factual matters through its own due diligence.

The validity of a strata corporation's authorization of a loan and related matters is a function of both statutory authority (such as sections 79 through 82, 108 and 111) and factual elements (proper notice of a general meeting, quorum, meeting procedures). Even if legal counsel was present at the meeting where the resolutions were adopted, it is prudent to prepare an officer's certificate to be signed by the council chair or another council member as to factual matters, on which legal counsel relies in giving the required opinions.

## **VII. Borrowing By Section**

In a strata corporation with sections, if members in one section get all the benefit from a capital project, then that section may be the correct body to bear the expense.

This is relatively straightforward if the project is funded purely by a special levy, as the section has authority under subsection 194(2) to raise special levies for expenditures authorized by the section.

Where a loan is considered for the project, the situation becomes less clear. Subsection 194(2) gives a section specific powers and duties including the power to enter into contracts, but section 2 does not apply to give the section the power and capacity of a natural person. Arguably a loan agreement and related security are authorized under subsection 194(2), and by logical extension the loan and security must be approved by the owners within the section by  $\frac{3}{4}$  vote pursuant to sections 79 through 82 and 111. However, in the absence of a full power and capacity provision, some legal counsel are understandably reluctant to give the necessary power, capacity and authorization opinions to a lender in relation to a section.

For a lender, the lack of clear dissolution provisions applicable to a section is a major concern. Sections can be "cancelled" pursuant to section 193 simply by adoption of bylaw amendments to that effect. The *Strata Property Act* is silent on what happens to obligations of the section as at the date of cancellation.

## VIII. Appendix—Statutory Provisions

### Definitions and interpretation

1 (1) In this Act:

"common asset" means

- (a) personal property held by or on behalf of a strata corporation, and
- (b) land held in the name of or on behalf of a strata corporation, that is
  - (i) not shown on the strata plan, or
  - (ii) shown as a strata lot on the strata plan;

"common expenses" means expenses

- (a) relating to the common property and common assets of the strata corporation, or
- (b) required to meet any other purpose or obligation of the strata corporation;

"common property" means

- (a) that part of the land and buildings shown on a strata plan that is not part of a strata lot, and
- (b) pipes, wires, cables, chutes, ducts and other facilities for the passage or provision of water, sewage, drainage, gas, oil, electricity, telephone, radio, television, garbage, heating and cooling systems, or other similar services, if they are located
  - (i) within a floor, wall or ceiling that forms a boundary
    - (A) between a strata lot and another strata lot,
    - (B) between a strata lot and the common property, or
    - (C) between a strata lot or common property and another parcel of land, or
  - (ii) wholly or partially within a strata lot, if they are capable of being and intended to be used in connection with the enjoyment of another strata lot or the common property;

### Establishment of strata corporation

- 2 (1) From the time the strata plan is deposited in a land title office,
- (a) a strata corporation is established, and
  - (b) the owners of the strata lots in the strata plan are members of the strata corporation under the name "The Owners, Strata Plan [*the registration number of the strata plan*]".
- (2) Subject to any limitation under this Act, a strata corporation has the power and capacity of a natural person of full capacity.

### Ownership of property

66 An owner owns the common property and common assets of the strata corporation as a tenant in common in a share equal to the unit entitlement of the owner's strata lot divided by the total unit entitlement of all the strata lots.

### Disposal of land held in strata corporation's name

79 To sell, lease, mortgage, grant an easement over, grant a restrictive covenant affecting or otherwise dispose of land that is a common asset, the strata corporation must proceed as follows:

- (a) a resolution approving the disposition must be passed by a 3/4 vote at an annual or special general meeting;
- (b) any document needed to effect the disposition must be executed by the strata corporation and delivered to the land title office accompanied by a Certificate of Strata Corporation in the prescribed form, stating that the resolution referred to in paragraph (a) has been passed and that the document conforms to the resolution.

### Disposal of common property

- 80 (1) To dispose of common property in a way set out in section 253 (1), the strata corporation must ensure that the requirements of Part 7 of the *Land Title Act* are met.
- (2) To dispose of common property in a way not set out in section 253 (1), the strata corporation must ensure that the following requirements are met:
- (a) a resolution approving the disposition must be passed by a 3/4 vote at an annual or special general meeting;
  - (b) holders of financial charges noted on the common property record must consent in writing to the proposed disposition unless in the registrar's opinion the interests of the persons who have not consented in writing are not adversely affected by the disposition;
  - (c) any document needed to effect the disposition must be executed by the strata corporation and delivered to the land title office accompanied by
    - (i) a Certificate of Strata Corporation in the prescribed form, stating that the resolution referred to in paragraph (a) has been passed and that the document conforms to the resolution, and
    - (ii) the written consents referred to in paragraph (b).
- (3) For the purpose of determining what consents are required under subsection (2) (b) from holders of financial charges, section 97 (3) to (8) of the *Land Title Act* applies to the disposition of common property.

### Strata corporation must not mortgage common property

81 The strata corporation must not mortgage common property.

### Acquisition and disposal of personal property by strata corporation

- 82 (1) The strata corporation may acquire personal property for the use of the strata corporation.
- (2) The strata corporation may sell, lease, mortgage or otherwise dispose of personal property.
- (3) The strata corporation must obtain prior approval by a resolution passed by a 3/4 vote at an annual or special general meeting of an acquisition or disposal of personal property if the personal property has a market value of more than
- (a) an amount set out in the bylaws, or
  - (b) \$1 000, if the bylaws are silent as to the amount.

(4) This section does not apply to the acquisition or disposal of an investment instrument referred to in section 95 (2).

#### **Strata corporation may borrow**

- 111 (1) The strata corporation may, after approval by a resolution passed by a 3/4 vote at an annual or special general meeting, borrow money required by it to exercise its powers and perform its duties and, subject to section 81, may secure the repayment of money borrowed by it, and the payment of interest on that money.
- (2) Without limiting subsection (1), the strata corporation may secure the repayment of money borrowed by it, and the payment of interest, by one or more of the following:
- (a) a mortgage of property, other than common property;
  - (b) an assignment of unpaid strata fees or special levies;
  - (c) a negotiable instrument.

#### **Owner's liability for judgment against strata corporation**

- 166 (1) A judgment against the strata corporation is a judgment against all the owners.
- (2) A strata lot's share of a judgment against the strata corporation is calculated in accordance with section 99 (2) or 100 (1) as if the amount of the judgment were a contribution to the operating fund and contingency reserve fund, and an owner's liability is limited to that proportionate share of the judgment.
- (3) Other than as set out in this section, an owner has no personal liability, in his or her capacity as an owner, for loss or damage arising from any of the following:
- (a) the management and maintenance of the common property and common assets by the strata corporation;
  - (b) the actions or omissions of the council or strata corporation;
  - (c) any contracts made or debts or liabilities incurred by or on behalf of the strata corporation.

Interpretation Act s 29:

**"dispose"** means to transfer by any method and includes assign, give, sell, grant, charge, convey, bequeath, devise, lease, divest, release and agree to do any of those things;