

WHOSE STRATA LOT IS IT ANYWAY?

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Who qualifies as an “owner” of a strata lot may surprise you. For those of you who serve on strata councils, this article may provide a helpful reference for situations you are bound to encounter. Strata lot owners have certain powers and duties. Owners can serve on council, vote at general meetings, request a hearing before council, and so on. For example, owners are responsible to pay for strata fees, special levies and certain other charges. In addition, certain categories of individuals can act for an owner in various situations. Some representatives acting on behalf of owners will take on all of the powers and duties of an owner, and others only take on some of them. For strata corporations that are self managed and do not have a professional strata property agent, these situations are even more difficult to address.

Ownership of a strata lot may change without the strata corporation being notified. We will discuss how this may occur and how the strata corporation can require owners to inform the strata corporation of a change in ownership or representation. We will also discuss why it is important, for strata councils to plan how they will respond to and anticipate changes in ownership.

Who is an owner?

To understand who qualifies as an owner of a strata lot, one should first look to the definition of “owner” in section 1 of the *Strata Property Act*:

Strata Property Act, SBC 1998, c 43, section 1 [SPA]:

"owner" means a person, including an owner developer, who is

- (a) a person shown in the register of a land title office as the owner of a freehold estate in a strata lot, whether entitled to it in the person's own right or in a representative capacity, or
- (b) if the strata lot is in a leasehold strata plan, as defined in section 199, a leasehold tenant as defined in that section, unless there is
- (c) a registered agreement for sale, in which case it means the registered holder of the last registered agreement for sale, or
- (d) a registered life estate, in which case it means the tenant for life;

The most obvious example of an owner is the person shown as the owner of a freehold estate on the title search and leasehold tenants, including an owner developer. There are also less obvious situations when a person is an owner. For example, when an agreement for sale is registered on title for the strata lot, then the ownership will appear as a charge, not as the registered owner. This means that the registered holder of the last registered agreement for sale will be able to vote as an

owner and can stand for strata council. The same is true for a tenant for life in a registered life estate.

If there is a registered life estate on title, a tenant for life is the owner of a life estate, and is the “owner” of the strata lot during his or her lifetime. A life estate is created under a Will. Upon the death of the tenant for life, then title to the strata lot passes through the estate to the remainder men. For example, a strata lot owner may pass away and specify in their Will that their spouse will have a life estate in the strata lot. When the spouse with the life estate passes away, ownership of the strata lot will be determined based on the original owner’s Will.

There may also be times where no one qualifies as an owner. For example, when the sole owner of a strata lot passes away and there is no representative on title for the strata lot, no one may qualify as an owner for a period of time. Strata council should be prepared for situations where there may be no one who can vote at a general meeting for the strata lot, or no one from a strata lot who is eligible to stand for strata council.

Who can act for an owner and in what circumstances?

1) Individuals with Representative Capacity

You will note that under the definition of “owner” under the *Strata Property Act*, the subsection concerning the person shown on the title of a freehold strata lot also includes those shown in a representative capacity. Examples of different representative capacities a person may have include an administrator, executor, and trustee in bankruptcy. These individuals are considered owners under the *Strata Property Act*, meaning that they may vote on behalf of owners and stand on council.

2) Attorneys in Power of Attorney Situations

A power of attorney is a legal document by which a person, referred to as the “adult” appoints an “attorney” to exercise certain legal rights of the adult. Some attorneys may be granted the power to vote on behalf of an owner at general meetings, and some may not.

Generally, the attorney is not registered on title, but a power of attorney can specifically allow for this. As a result, in certain circumstances, an attorney meets the definition of an owner under the *Strata Property Act*. In such circumstances, an attorney may be eligible to serve on the strata council. However, we will discuss below why this may be problematic.

3) Corporate Representatives

Corporate representatives may also be eligible to stand for strata council pursuant to section 28 of the *Schedule of Standard Bylaws*, and may vote at general meetings on behalf of the corporate body that owns a strata lot. Strata councils should consider whether it is appropriate to require

corporate representatives to provide the strata corporation with proof of a resolution of the board of directors prior to serving on the strata council.

4) *Conflicts of Interest*

When a representative or attorney is acting on behalf of an owner, there may be a conflict of interest between the duties they hold to the owner, and the duties of a council member, who must act in the best interest of the strata corporation. The strata corporation should obtain legal advice when considering whether a representative or attorney may serve on strata council.

5) *Documentation*

In each of the above instances when an individual may act on behalf of an owner, strata council members should consider what documentation the strata council requires to confirm whether the representative has the authority to act.

For example, council may want an owner to provide a copy of the power of attorney to establish that the attorney has the authority to act on their behalf, and to what extent they can act for the owner.

With respect to corporate representatives, strata council may want representatives of corporate owners to provide a duly passed resolution of the directors providing them with the authority to act on behalf of the corporate owner regarding the strata lot.

How can the owner change without the strata being informed?

The strata corporation may not be informed when ownership of a strata lot changes because of a transmission, as opposed to a transfer. Under the *Land Title Act*, RSBC 1996, c 250, a transfer includes a conveyance, a grant and an assignment. Under the *Land Title Act*, a transmission means a change of ownership that is effected by the operation of an act or law, court order or change in a personal representative or trustee. Unfortunately, the exact situations when a transmission will occur are not described in the *Land Title Act*, as these situations are created pursuant to federal, provincial, and even municipal legislation.

When there is a transfer of title to a strata lot, the strata corporation is generally put on notice that there will be a change in ownership when a lawyer or notary requests a Form F – Certificate of Payment. When a transfer of a strata lot occurs, a Form F – Certificate of Payment signed on behalf of the strata corporation is submitted to the land title office, along with the transfer documents. When there is a transmission, a Form F – Certificate of Payment is not required by the land title office for the ownership to change. As such, the normal notification from a lawyer or notary to the strata corporation or strata manager regarding a possible change in ownership does not occur.

Another consideration when there is a transmission is that amounts owing to the strata corporation, even strata fees and special levies, may remain in arrears after the transmission occurs. This comes as a shock to strata council members, as strata fees and special levies must either be paid when there is a transfer, or paid into court as disputed funds in certain rare situations.

Why is it important now, more than ever, to know owners and those who are acting for them?

Today, council members are not as physically connected with owners and other residents as they were in the past. The COVID-19 pandemic has resulted in virtual meetings being the norm. The increased use of online meeting platforms also allows strata council members and owners to attend meetings remotely, removing the need to travel to different cities, or to physically attend meetings altogether.

Relatedly, council members may not be as connected to other individuals involved with the strata corporation as they used to for other reasons. In large strata complexes with hundreds of strata lots, it would be quite an impressive feat for strata council members to know every owner, tenant and occupant. There have also been an increase in mixed-use strata properties with residential and non-residential owners, tenants and occupants, which results in a less cohesive community.

With the increase in the number of general meetings being held by electronic means, unfamiliar faces are popping up in virtual waiting rooms, waiting to be admitted to general meetings. These individuals are expecting to vote on resolutions or stand for strata council, either as an owner or purporting to do so on behalf of an owner. On February 16, 2021 a regulation under the *Covid-19 Related Measures Act* was passed in British Columbia. This Regulation allows strata corporations to continue to hold remote meetings until July 10, 2021.

When strata corporations may safely hold general meetings in person again, unfamiliar faces may appear at these meetings as well in a variety of circumstances. For instance, executors, attorneys under a power of attorney and corporate representatives may attend.

Given the weakened physical connection between individuals involved with strata corporations, strata council members, as well as some inevitable circumstances discussed above, it makes sense to consider who qualifies as a strata lot owner and who can act for a strata lot owner in a more formal way. It also makes sense to consider how strata corporations can amend their bylaws to place more responsibility on owners and those who can act on behalf of owners to inform the strata corporation of their identities and provide documentation.

What steps can the strata corporation require notification of changes in ownership and representation?

Section 4 of the *Schedule of Standard Bylaws* requires an owner to provide the strata corporation with the owner's name, strata lot number, and mailing address outside of the strata plan, if the

owner has one, within two weeks of becoming an owner. In our view, owners and their representatives should also be responsible pursuant to the strata corporation's bylaws to provide timely notification of their identity and contact information when there is a change in ownership or representation and proper documentation backing up the change.

The strata corporation may adopt bylaws requiring owners to inform strata corporations of changes in ownership and representation in various situations, including the following:

- Transmissions (executors, beneficiaries, life estates, trustees in bankruptcy)
- Registered agreements for sale
- Representatives of corporate owners
- Powers of attorney
- Tenants with powers under section 148 of the *Strata Property Act*
- Company receivers

Here are three examples of changes that may be made to section 4 of the *Schedule of Standard Bylaws* to obligate owners to inform the strata corporation of a change in ownership or representation:

- Notification required by an owner to the strata corporation of transmission or transfer of title within two weeks of becoming an owner, in addition to providing contact information.
- Notification required by an owner to the strata corporation of transmission or transfer of title prior to exercising the powers or duties of an owner, including but not limited to voting at a general meeting, appointing a proxy or standing for council, even in circumstances when less than two weeks have passed since the person became an owner.
- Specifying documentation required by the strata corporation, for an owner who is providing notification to the strata corporation of a transmission or transfer, 48 hours prior to exercising the powers or duties of an owner.

A strata corporation may also want to include a revised version of section 27 of the *Schedule of Standard Bylaws* in the strata corporation's bylaws to require an owner to provide documents prior to a general meeting, when the owner has not previously given notice of a change in ownership or individual representing an owner. Strata council should have proper documentation to review regarding whether a person qualifies to vote at a general meeting. Consideration should be given to how these documentary requirements will be met when the general meeting is held by electronic means.

Strata council should also consider the privacy implications of the collection, use, disclosure, retention and destruction of emergency contact information and alternative contact information. When can the strata corporation disclose this information to individuals who act on behalf of owners?

Under section 18 of the *Personal Information Protection Act*, SBC 2003, c 63 [*PIPA*], a strata corporation may only disclose personal information about an individual without their consent in certain circumstances. These circumstances include “if the disclosure is clearly in the interests of the individual and consent cannot be obtained in a timely way,” (section 18(1)(a), *PIPA*) and “if the disclosure is necessary for the medical treatment of the individual and the individual does not have the legal capacity to give consent,” (section 18(1)(b), *PIPA*).

The strata corporation may wish to adopt a bylaw and consider revisions to their privacy policy to allow the strata corporation to obtain consent from owners to collect alternative contact information for broader use and disclosure purposes than those described in *PIPA*.

If your strata corporation would like to adopt bylaws to address the above issues, and consider revising its privacy policy, it is recommended that you seek legal advice to draft bylaws that meet the unique needs of your strata corporation. This article is for educational purposes only and does not constitute legal advice.