

THE INTERSECTION BETWEEN ELDER LAW AND STRATA LAW

By Elaine T. McCormack, J.D. and Emily J. Sheard, J.D.

Published in the Winter 2021 edition of The Scrivener

How does elder law apply to life in a strata complex? In this article, we discuss elder law and strata law, and highlight where the two intersect.

For instance, we discuss how elder law applies to strata complexes with respect to

- (a) the application of certain bylaws;
- (b) estate planning;
- (c) alterations to strata lots, common property, and common assets;
- (d) human rights and accommodations for physical and mental disabilities; and
- (e) electronic and physical attendance at annual and special general meetings.

It may be helpful to recognize some of these issues when you are providing notarial services to your clients.

1. What is “elder law” and what is “strata law”?

Elder law refers to the areas of law that tend to be associated with ageing or that have a greater impact on individuals who are 65 years of age and older. Traditionally, discussions on those areas of law have emphasized matters on an individual-level, such as Wills and estates, human rights, and Powers of Attorney, rather than on a societal-level.

Strata law encompasses many different areas of law and concerns the application of those various areas of law to stratified complexes and communities.

2. Why is the intersection between elder law and strata law important?

The intersection between elder law and strata law is becoming increasingly important as Canada’s population continues to grey.

According to Statistics Canada, as of July 1, 2020, 18.0% of Canada’s population was 65 years of age and older. That percentage is expected to increase to between 21.4% and 23.4% by 2030. As the population ages, strata corporations and individual owners, tenants and occupants will increasingly encounter issues related to age.

In the strata world, one notable trend is that strata lot owners want to age in place—that is, strata lot owners want to change not *where* they live, but *how* they live.

Changing how someone lives in a strata community may involve altering their strata lot, the common property, or common assets. We discuss examples of those changes in more detail in the sections below.

Changing where someone lives may be challenging for a number of reasons. For instance, after residing in a strata complex for many years, it is likely that a great sense of community has been cultivated. As such, a stronger attachment to the complex and the general area makes it difficult for individuals to leave. In addition, in today's hot real estate market, increased housing prices and associated transactional costs may make selling an older strata lot and buying into another strata complex difficult.

3. When does the intersection between elder law and strata law occur?

The below sections provide some key examples of when elder law and strata law intersect.

a) Age-restriction bylaws

Some strata complexes have age-restriction bylaws, such as retirement communities. Often, age-restriction bylaws require residents to be 55 years of age or older, and prohibit anyone under 19 years of age from residing in the complex.

There is a common misconception that age-restriction bylaws apply to nonresident owners. Strata corporations cannot legally prohibit someone from *owning* a strata lot because they do not meet the requirements of an age-restriction bylaw. Rather, a strata corporation can enforce an age-restriction bylaw to prohibit individuals that do not meet the requirements from *residing* in a strata lot.

If a strata corporation already has an age-restriction bylaw, there are important considerations for prospective purchasers. For instance, some age-restriction bylaws require all occupants to be at least 55 years of age. Residents who are 55 years of age and older may eventually decide to live with a younger spouse, have a child or grandchild live with them, or may require a live-in caregiver. These other individuals may not meet the requirements of the strata corporation's age-restriction bylaw.

Even if the owners approve of an age-restriction bylaw at an annual or special general meeting and the bylaw amendment is filed in the Land Title Office, it does not apply to everyone. Section 123(2) of the *Strata Property Act*, SBC 1998, c. 43 provides that “[a] bylaw that restricts the age of persons who may reside in a strata lot does not apply to a person who resides in the strata lot at the time the bylaw is passed and who continues to reside there after the bylaw is passed.”

Age-restriction bylaws may also have implications on an individual who inherits the title to a strata lot. If the strata corporation has a valid age-restriction bylaw in force, and the

individual inheriting the strata lot does not meet the requirements of the age-restriction bylaw and was not residing in the strata lot prior to the age-restriction bylaw being passed, then that person is legally entitled to own the strata lot, but not to reside in it.

b) Estate planning

Determining who is a contact person for a strata lot can be complex in certain situations. Executors acting on behalf of an estate, and attorneys acting pursuant to a Power of Attorney document, may or may not qualify as an “owner” as defined by the *Strata Property Act*. Whether someone qualifies as an “owner” under the definition may impact whether that individual can vote at annual and special general meetings and serve on strata council. For more information on this topic, consider our article “Whose Strata Lot is It Anyway?” in the Spring 2021 edition of *The Scrivener*.

c) Alterations

In the strata world, we often refer to certain renovations to strata lots, common property, and common assets as “alterations.” Alterations often involve major renovations, such as replacing flooring or removing walls. Some strata corporations consider smaller renovations such as painting the walls of a strata lot to constitute an alteration.

As the population ages, strata councils will receive more requests for alterations to make strata complexes more accessible. Individuals may ask to make certain alterations to strata lots, the common property or common assets, or request for the strata corporation do so.

Prospective purchasers should review and understand strata corporation bylaws concerning alterations prior to buying into a strata complex. Typically, written approval from the strata council is required to make many alterations to a strata lot. Under section 5 of the *Schedule of Standard Bylaws to the Strata Property Act*, strata councils cannot unreasonably withhold approval for alterations to strata lots involving specific things, such as doors, windows, or fences.

Common areas that may be changed to increase accessibility include the following

- replacing traditional door knobs with levered door handles;
- replacing heavier doors with lighter doors;
- replacing regular doors with power doors;
- painting doors a different colour;
- converting regular parking spaces into disability parking; spaces
- installing curb cuts into road curbs;
- installing stair climbers or elevator lifts; and
- installing braille signage.

Typically, written approval from the strata council is required to approve alterations to common property or common assets. In some cases, a $\frac{3}{4}$ vote of the owners at an annual or special general meeting is required to approve of an alteration to common property or land that is a common asset.

Most commonly, an owner's responsibilities for alterations made to a strata lot, the common property, or a common asset are set out in a written alteration agreement signed by the owner and members of the strata council.

Prospective purchasers of residential strata lots should be aware they might be asked by the strata council to assume liability for alterations made to the strata lot, common property, or common assets made by the current owner. Some strata corporations have a bylaw that provides that the alteration will be removed if a subsequent purchaser does not enter into an agreement.

If a strata council refuses an alteration request, an owner may seek relief by requesting a hearing before the strata council under section 34.1 of the *Strata Property Act*. The strata council must hold the hearing within 4 weeks of the request. An owner can request that the strata council make a decision, which must be provided by the strata council to the owner in writing within a week after the hearing. Some alteration requests may also qualify as requests for accommodation under the *Human Rights Code*, RSBC 1996, c. 210 that we discuss in more detail in the section below.

d) Human rights

The British Columbia Human Rights Tribunal has found that strata corporations are organizations governed by the *Human Rights Code*. As such, in certain situations, strata corporations have a duty to accommodate residents who request an accommodation based on a physical or mental disability. If the strata corporation must accommodate the resident, the strata corporation's obligation is to accommodate the resident to the point of undue hardship. As a result, in certain situations, strata corporations may be required under the *Human Rights Code* to accommodate individuals by making or permitting individuals to make alterations such as those noted above.

Individuals may request exemptions from certain bylaws, for instance, bylaws restricting or prohibiting pets or smoking.

With respect to pet restriction bylaws, section 123(1.01) of the *Strata Property Act* provides that "[a] bylaw that prohibits a pet or other animal or that restricts the access of the pet or other animal to a strata lot or common property does not apply to (a) a guide dog or service dog, or (b) a dog that is a member of a retired guide dog or service dog team if the person who is a member of the team is an owner, tenant or occupant." Pet restriction bylaws are subject to exemptions made pursuant to the *Guide Dog and Service Dog Act*, SBC 2015, c. 17.

In addition, individuals may also seek an exemption from pet bylaws pursuant to the *Human Rights Code*. For instance, a resident may require a pet to assist them in relation to a physical or mental disability. If the required pet does not ordinarily comply with the strata corporation's pet bylaws, then the resident may apply to the strata council to request an exemption from those bylaws.

Smoking is also a common human rights issue in strata complexes that goes both ways. Some individuals may request an exemption from a strata corporation's no-smoking bylaw in order to accommodate their physical or mental disability. For instance, an individual may take the position that they need to smoke cannabis for pain control. More commonly, individuals may request that the strata corporation accommodate them by preventing or reducing their exposure to second-hand smoke in the complex, as such smoke may aggravate their disability.

e) Attendance at annual and special general meetings

The COVID-19 pandemic has accelerated the need for strata corporations to hold meetings electronically to avoid large groups of people from gathering. Traditionally, the *Strata Property Act* has required strata corporations to have a filed bylaw authorizing annual and special general meetings to be held by electronic means.

In response to the pandemic, a ministerial order is in effect to allow strata meetings to be held electronically in British Columbia during the provincial state of emergency *without* the need to pass a bylaw. The latest regulation permits strata corporations to continue to hold annual and special general meetings by electronic means until December 31, 2021, without a bylaw authorizing them to do so.

Holding annual and special general meetings by electronic means may have positive and negative effects on accessibility.

Individuals who have previously not been able to physically attend annual and special general meetings due to physical or mental disabilities may be able to attend the meeting by videoconference or teleconference. Holding annual and special general meetings by electronic means may enable individuals to participate in conversation regarding the governance of their community, as opposed to voting by proxy or not participating in annual and special general meetings at all.

Requiring technology to be used in order to attend an annual or special general meeting can create barriers to participation for others. For instance, some individuals may not own a computer or smartphone or have an email address or functioning phone line. Even if individuals may access a public computer or telephone, there may be difficulties logging in and connecting to the meeting due to unfamiliarity with those devices. One way to address that issue may be to hold a "hybrid" meeting, partially by electronic means and partially at a physical location.

The examples discussed above are only some of the many examples of how strata law intersects with elder law. There is much to consider—we recommend that strata corporations and individuals seek legal advice to anticipate the issues explored in this article, as well as to deal with these issues as they arise.

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