

Guide 18

What to Know about Limited Common Property and Short Term Exclusive Use Arrangements of Common Property

IMPORTANT NOTICE

This guide was prepared by the Superintendent of Real Estate and updated by the Ministry of Housing and Social Development. This guide, along with other guides in the series, provides basic information about certain parts of the British Columbia *Strata Property Act* (the "Act") and its Regulations.

Readers cannot rely on the guides for legal advice

The guides do not:

- provide a legal interpretation of provisions of the *Act* or Regulations. Please consult the *Act* and Regulations and court judgments to determine the complete and precise requirements of the legislation.
- include information about how the courts may have interpreted provisions of the *Act* or Regulations.

Readers should seek professional advice if they need to determine specific legal rights and duties which may apply in their particular situations.

The Province of British Columbia may periodically update the guides. Nevertheless, neither the Superintendent of Real Estate, nor any other authority of the Province of British Columbia, is liable for any inaccurate or incomplete information in any guide. For the convenience of readers, ***updated information has been flagged in bold italic*** in the guides and will remain marked this way for approximately one year from their noted revision dates.

In addition, the Standard Bylaws referred to in the guide do not necessarily apply to every strata corporation. Strata corporation bylaws can be enacted, amended or repealed by the developer or the strata corporation. Please conduct a search at the Land Title Office to obtain a copy of all filed bylaws and bylaw amendments for a specific strata corporation to determine which bylaws are applicable.

Strata lot owners and tenants may be able to prevent other strata lot owners from using parts of the strata development even though the area is designated as common property and is not designated as part of the strata lot. The different kinds of common property areas of a strata development which can be restricted for the use of one or more strata lot owners are explained in this guide.

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1. Common Property that can be Exclusively Used

Areas designated on a strata plan as common property may be restricted for the use of one or more strata lot owners or tenants if the common property is:

- designated as limited common property (“LCP”):
 - LCP is common property designated for the specific use of a strata lot or strata lots;
 - LCP must either be noted on the registered strata plan or on a sketch plan attached to a resolution filed at the Land Title Office.
- granted to owners or tenants for a short term exclusive use arrangement:
 - the strata council has the power to enter into a short term exclusive use arrangement with owners or tenants over common assets or common property that are not designated as LCP.

2. Designating and Removing a Designation of LCP (Limited Common Property)

Common property may be designated as Limited Common Property (LCP) by the following methods:

- the Owner Developer can designate areas as LCP on the strata plan when it is deposited at the Land Title Office:
 - the strata corporation will need to obtain a unanimous resolution to remove LCP designated in this manner.
- the Owner Developer can designate parking stalls on a strata plan as limited common property at any time before the first annual general meeting, or if the strata development is phased, on a phased strata plan at any time before the first annual general meeting of that phase:
 - the Owner Developer does not need to obtain a resolution of the strata corporation to do this;
 - the strata corporation will need to obtain a unanimous resolution to remove parking spaces designated as LCP in this manner.
- the strata corporation can amend the strata plan to add LCP:
 - such a strata plan amendment requires a unanimous resolution to be passed at an annual or special general meeting;
 - the strata plan amendment is filed at the Land Title Office with:
 - a reference or explanatory plan that shows the amendment, as required by the registrar of the Land Title Office; and

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- a “Certificate of Strata Corporation” (Form E) stating that the resolution has been passed and that the reference or explanatory plan conforms to the resolution.
 - a designation of LCP on a strata plan created by way of a plan amendment can only be removed with a unanimous resolution and by filing a new plan amendment which shows the removal of the LCP.
- the strata corporation can designate an area as LCP by filing a sketch plan at the Land Title Office:
 - the designation of LCP in this manner requires the strata corporation to pass a resolution approved by a $\frac{3}{4}$ vote at an annual or special general meeting;
 - the resolution needs to be filed at the Land Title Office with a sketch plan that is satisfactory to the registrar and shows:
 - all the areas that are being designated as LCP; and
 - which strata lot will be entitled to the use of the newly designated LCP.
 - LCP designated in this manner can be removed by filing a resolution passed by a $\frac{3}{4}$ vote, which approves the removal of LCP in the Land Title Office. A subsequent sketch plan does not need to be filed.

3. Creating and Cancelling a Short Term Exclusive Use Arrangement of Common Property

The following provisions apply to creating and cancelling short term exclusive use arrangements:

- a short term exclusive use arrangement of common property is granted specifically to an owner or tenant by the strata council, and is not attached to the strata lot, so if an owner sells his or her strata lot or a tenant ends his or her tenancy, the short term exclusive use arrangement will automatically terminate;
- however, if the short term exclusive use arrangement significantly changes the original use or appearance of common property or land that is a common asset, the short term exclusive use arrangement cannot be made by the strata council without a resolution passed by a $\frac{3}{4}$ vote of the strata corporation at an annual or special general meeting;

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- a short term exclusive use arrangement cannot be for a period of more than one year, but can be renewed for additional terms of not more than one year;
- the strata council may place conditions on an owner's exclusive use of common property or assets in a short term exclusive use arrangement; and
- the strata council may cancel a short term exclusive use arrangement without any reason by giving the owner or tenant reasonable notice of the cancellation.

4. Repair of LCP and Common Property with a Short Term Exclusive Use Arrangement

Usually, a strata corporation has an obligation to repair and maintain LCP and common property that is used by an owner or tenant in accordance with a short term exclusive use arrangement.

However, the strata corporation bylaws:

- can be created to obligate an owner to repair and maintain LCP that is designated for the use of that owner; but
- cannot be created to obligate the owner or tenant to repair and maintain common property that is used in accordance with a short term exclusive use arrangement.

The Standard Bylaws require an owner to repair and maintain LCP, but not:

- if the repair or maintenance would generally occur less often than once year;
- to repair the structure or exterior of the building such as: chimneys, stairs, balconies, other things attached to the exterior, doors, windows or skylights that front the common property; or
- to repair fences, railings or similar structures that enclose patios, balconies or yards.

[For more information on repairs please refer to "*Guide 20: Who is Responsible for Repairs*".]

5. Bylaws and Rules for LCP and Common Property with a Short Term Exclusive Use Arrangement

The management, maintenance, use and control and enjoyment of common property (including LCP) and common assets within the strata corporation can be provided for with bylaws:

- new bylaws must be approved by the strata corporation and filed in the Land Title Office.

Only the use, safety and condition of common assets, common property and LCP can be provided for with rules:

- rules are kept within the strata corporation records and not filed in the Land Title Office;
- rules must be ratified by majority vote at the next annual general meeting following the creation of the rule;
- owners and tenants must be informed of new rules as soon as feasible;
- rules must be in a written form that can be photocopied.

[For more information on bylaws and rules please refer to “*Guide 13: How to Create and Amend Bylaws and Rules*”.]

6. Alteration of LCP or Common Property with a Short Term Exclusive Use Arrangement

The Standard Bylaws provide that alterations by an owner to common property, LCP, or common property with a short term exclusive use arrangement:

- requires written approval from the strata corporation; and
- may require, as a condition of approval for the alteration, that the owner agree in writing to take responsibility for any expenses relating to the alteration.

A resolution passed by a $\frac{3}{4}$ vote at an annual or special general meeting must be obtained if the alteration will result in a significant change in the use or appearance of common property or a common asset.

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7. Access to LCP and Common Property with a Short Term Exclusive Use Arrangement

To enable the strata corporation to exercise its powers and perform its duties an owner or tenant must allow the strata corporation reasonable access to LCP or to common property or a common asset that is subject to a short term exclusive use agreement.

8. User Fees For the Use of Common Property

A strata corporation may impose a user fee for the use of common property. A strata corporation that wishes to do this must ensure that the amount of the fee is reasonable and the fee is set out in either:

- a bylaw; or
- a rule that has been ratified at the first annual general meeting following the creation of the rule.

References:

Sections of the Act: 71-77, 110, 119, 125, 257, 258

Regulations: 6.9, 13.6

Standard Bylaws: 6, 8