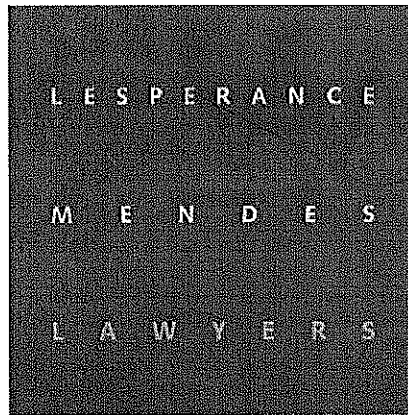
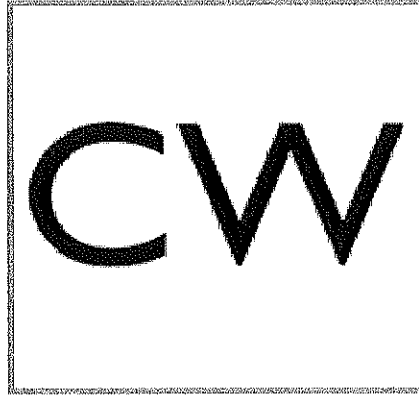
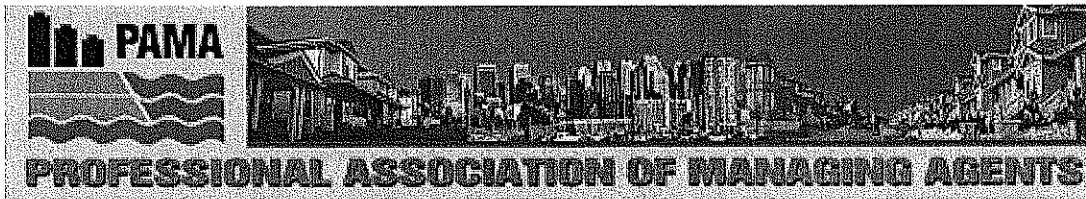


Section and Types

Fundamentals for the Property Manager



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SECTIONS AND TYPES

Sections and Types are often misunderstood concepts. As a result, sometimes sections are created, even though types would achieve the goal of the owners. Other times, strata corporations have created sections but function as if types were created. Sections require a more complex governance structure and accordingly, are more difficult to manage and administer. Sections require far more than the creation of separate budgets or the allocation of expenses. Although what generally prompts their creation is a desire to allocate expenses “fairly”, the creation of sections will impose a more complex governance structure. Accordingly, a strata corporation that contains sections is more difficult to manage and administer. This paper will provide a discussion of the requirements of sections from a governance, management, and expense allocation perspective. As well, the paper will give you an overview of the differences between sections and types.

Overview

A section is a legal entity with the same powers and duties as a strata corporation but only regarding matters that relate solely to the section. Sections are created by bylaw. After the creation of a section, the strata corporation retains powers and duties regarding matters of common interest to all owners. Unlike types, the kinds of sections that can be created in a residential context are limited. The following distinctions may give rise to strata lot types, for the purposes of identifying the creation of sections:

- Different Physical Characteristics:
 - Apartments, townhouses and detached homes
 - Different types may be recognized within these categories
- Different Uses:
 - Residential as opposed to non-residential strata lots
 - Non-residential strata lots used for significantly different purposes

(Section 11.1 of the *Strata Property Regulation*)

Attempts to create sections on the basis of other criteria have failed. In *Oakley v. Strata Plan VIS 1098*, 2003 BCSC 1700, the strata corporation, consisting of four buildings of apartment-style strata lots, tried to create four sections, one section for each building. In this way, each section (building) would be responsible for the repair and maintenance of their own building. The Court held that neither the *Strata Property Act* nor the *Regulation* authorized the creation of these types of sections. Similarly, in *Lim v. Strata Plan VR 2654*, 2001 BCSC 1386, the Court held that the strata corporation could not create sections based on the ages (phases) of the various buildings.

Types, on the other hand, maintain the strata corporation as the sole legal entity, while permitting it to categorize strata lots for financial purposes only. Types, like sections, are

created by bylaw. The *Strata Property Act* does not define “types”, and so does not specifically limit the kinds of “types” that may be created. In *Smith v. Read*, [1993] B.C.J. No. 1348 (QL) (S.C.), the court indicates that the word “types” refers to “character or form of structure”. In other words, for a strata corporation to categorize strata lots into types, the strata lots must be different in character or form of structure. An obvious example is townhouse versus apartments, heritage versus modern styles, or commercial versus residential. Once types are created, the strata corporation can allocate expenses that benefit one type of strata lot to that type. However, only operating fund expenses can be allocated by type. Special levies are shared by all strata lots on the basis of unit entitlement even if the expense being funded benefits only one type of strata lot.

Sections Versus Types – A Summary

	<u>Sections</u>	<u>Types</u>
Categories	Restrictions on residential	No restrictions
Structure	Separate legal entities for each section	Strata corporation is the only legal entity
Governance	Each section has its own government	Strata council is the only government
Bylaw Creation	Bylaws can be created by individual sections	Bylaws are created by the strata corporation
Financial Operations	All entities maintain separate trust accounts	One reserve fund for entire strata corporation
Expenses and Levies	Sections can issue fees for expenses and special levies	Only operating fund expenses can be allocated by type

Both sections and types have their respective advantages and disadvantages. Choosing which path to govern will depend on what the strata corporation wishes to achieve. Does the strata corporation only want to allocate expenses while maintaining all the power? How important is it to be able to allocate special levies to only those strata lots that benefit from the expense? Do groups of owners wish for greater control over matters that affect them only? The answers to these questions will help determine whether to choose sections or types.

Below is a summary of the advantages and disadvantages of sections and types.

Advantages and Disadvantages of Sections

- Advantages:
 - Greater control over matters that are of concern only to that section
 - Owners in a section enjoy greater control over common expenses thereby reducing the potential for conflicts
- Disadvantages:
 - Multiple boards within one strata corporation add a significant cost to properly administer sections through financial operations, meetings, records, minutes and management operations
 - Conflicts may arise over allocation of powers between strata corporation and section

Advantages and Disadvantages of Types

- Advantages:
 - A single governance structure for streamlined management
 - Ability to allocate operating fund expenses by types
- Disadvantages:
 - Expenses that must be funded by special levy are shared by all strata lots regardless of whether they benefit only one type of strata lot
 - Where the strata lots of a type are a minority, that type has little control over common expenses or issues that affect that type only
 - Conflicts may arise over the allocation of expenses between types

Governance - Sections

Once sections are created, there will be at least three layers of administration for trust funds, council executive meetings, minutes of meetings, notice of general meetings and conduct of meetings and proceedings.

A validly constituted section has the same powers and duties of the strata corporation to:

- Establish its own operating & contingency reserve funds
- Prepare its own budget
- Collect strata fees & impose special levies (as prescribed in the bylaws that permits/directs the strata corporation to proceed with collection actions)
- Sue or arbitrate in the name of the section
- Enter into contracts - For example, sections can select a different property manager from strata corporation
- Acquire or dispose of land or other property
- Amend and enforce bylaws and rules exclusive to that section

Although a section has the same powers and duties of the strata corporation, the *Strata Property Act* also provides that a section does not have the right to contract in the name of the strata corporation. Notably absent from the list of a section's powers and duties set out in the *Strata Property Act* is the power to file a certificate of lien for non-payment of strata fees and special levies. As a result, it is prudent to address through the bylaws responsibility for financial administration, collections, liens, and order for sale proceedings. For example, the bylaws could provide that a strata corporation must file a certificate of lien upon request of the section executive or that prior to issuing a Form H or F that the council must deal with the arrears accrued on account of the section as specified by the section executive.

Administration

Sections may govern their own affairs concerning matters that solely relate to their section. In order to govern, sections function through their executive. Like strata corporations, sections have general meetings.

Sections must elect an executive. That executive has the same powers as the strata council with respect to the section. Section executive members are eligible to serve on strata council of strata corporation. The bylaws should address the function and administration of the executive. For example, the bylaws would set out who is eligible for the executive, the size of the executive, quorum, frequency of meeting, removal and replacement of executive members, limitation of spending, and delegation of power to member(s) of the executive (*Strata Property Act*, section 196).

Sections may call and hold meetings and pass resolutions in same manner as strata corporation. A strata corporation with multiple sections would have the following meetings:

- Annual General Meeting for strata corporation
- Annual General Meeting for each section
- Regular strata council meetings
- Regular section executive meetings for each section
- Separate minutes for each meeting
- Separate financial reporting and accounting for each section and the corporation

Bylaws and Rules

Like strata corporations, a section has bylaws and rules. The strata corporation's bylaws and rules will apply to each section unless those bylaws and rules have been amended by the section (*Strata Property Act*, section 197). The bylaws and rules can only be amended with respect to matters that relate solely to the section. For example, the townhouse section may create a bylaw limiting the use of the limited common property yards. Similarly, a residential section may adopt a bylaw that limits or restricts rentals.

The voting thresholds for the amendment of bylaws and rules are the same as those for strata corporations. In other words, sections of residential strata lots require amendments to be passed by a $\frac{3}{4}$ vote resolution. Sections of non-residential strata lots require that amendments be passed by a $\frac{3}{4}$ vote resolution or if a different voting threshold has been provided in the section's bylaws, by that voting threshold. Rules of the section are approved by a majority vote of the executive and ratified by a majority vote of the section owners at the annual general meeting of the section. Rules passed by the section executive must relate only to common property that has been designated for exclusive use of all strata lots in the section.

Some strata corporations create bylaws making sections responsible for maintenance of common property. The *Strata Property Act* does not specifically discuss a section's duties in regard to maintenance of common property. In fact, it specifies that a section is responsible for the common expenses of the section, including expenses relating to limited common property. There is no mention of the section being able to take responsibility of the expenses relating to common property. By this wording of the *Strata Property Act*, it does however permit the allocation of an exclusive expense (an expense that solely relates to that section).

Effect of Court Judgments

Judgments against the strata corporation relating solely to strata lots in a section are enforceable only against that section's strata lot owners (*Strata Property Act*, section 198). An owner's liability is limited to their proportionate share of the judgment, as set out in the formula below:

$$\frac{\text{Unit entitlement of strata lot}}{\text{Total unit entitlement of all strata lots in the section}} \times \text{Total amount of judgment}$$

Please note that this formula does not limit damages or liability where an individual strata lot owner is named in a claim.

Real Estate Transactions

There are a number of documents required for real estate transactions. For example, bylaws, rules and minutes of meetings are often requested, as are Forms B and F. In addition, engineering reports might also be required. For best practices, the bylaws should set out how this information will be supplied. Where the same property manager is used for the sections and the strata corporation, it is easy. However, sometimes the property manager that manages the strata corporation is not the property manager for the section. As a result, it is best to adopt bylaws so that if there is ever a change in management such that a section has a different property manager, the bylaws ensure that information that needs to be supplied in a real estate transaction is not missed.

There are a number of issues to consider. For example, each section will have their own financial statements and minutes of meetings. The section is responsible for keeping those documents, and so must protect privacy of any information collected in accordance with the *Personal Information Protection Act*. As a result, a section may not want to grant control of its documents. Similarly, a strata corporation may not want to take on the responsibility of keeping a section's documents safe. If the bylaws do not require the supply of documents in real estate transactions through the strata corporation, then the prospective buyer should be made aware that he or she should contact the property manager for the section to obtain further minutes or additional bylaws and rules.

Prospective purchasers may not be aware that the strata corporation has created sections. The *Strata Property Act* does not give a section the power to issue Form B's or require a section to provide a Form F. However, both these forms are essential to buyers. The Form B, in particular, may not provide a complete picture if information from the section is not obtained. For example, the strata corporation may not know the

amount in the section's contingency reserve fund or how much money is owing by the seller to the section. The Form F, which is often the way arrears are collected before a property is transferred, may not capture the arrears owing to a section unless the strata corporation is aware and willing to cooperate by withholding same. As a result, it is necessary to create bylaws that require the strata corporation to consult the section and incorporate its information as directed by the section. In addition, a multiple agency representation of sections may not permit a single agent to issue the form F on behalf of the section and the corporation. Separate Form B's may have to be issued by multiple agency scenarios.

Meetings

Consider the implications of decision-making, access to information, disclosure of information and agency representation, before you convene general meetings collectively for a sectioned strata corporation.

Who has access to records? A buyer requests a Form B for section 1 the residential section. They are entitled to the records and documents including the minutes under section 35 of the *Strata Property Act* that pertain to the strata corporation and to the residential section. Convening collective general meetings or collective council meetings where the minutes include decisions of all sections and the corporation, you may be providing a buyer with information they are not entitled to request.

How do you effectively control decision making at the meetings without clearly defined and separated voting cards, voting allocations, and separate quorum reports and secret ballots with a collective meeting? Multiple sections may have different voting entitlements, require separate $\frac{3}{4}$ votes for approval of resolutions, and may be seeking independent advice or legal counsel at a meeting that may be privileged information for only specific sections.

General Meetings

Will the meeting be convened consecutively or concurrently? If you convene the meetings consecutively, schedule the corporation meeting at a time that is convenient for each section and the corporation. For example:

- 6pm meeting of Section 2 commercial
- 7pm meeting of the strata corporation
- 8pm meeting of Section 1 residential section
- Registration: 6pm-8pm (until termination of a meeting)

When issuing voting cards, consider using different colours to ensure only those entitled to vote on a resolution do so. The voting cards should also identify the strata lot and voting entitlement if different than 1. Where all strata lots in a section are owned by one person, issue a proxy form that may also be used as a waiver of meeting to ensure the section supports the resolutions and approves the budget for that section. The

agenda will be determined by the bylaws and council or the executive. If the meetings are being held concurrently, the council and the executives will provide input to the agenda.

The following example illustrates all the necessary considerations:

- 173 units, 5 sections
- Each AGM consists of Corporation AGM and 5 Sections Meetings
- Accounts & financial reports for operating, depreciation and special levies are all separate and independent
- AGM notice packages to each section also include a separate notice package for the corporation
- A separate executive are elected for each section, which are also elected and approved as the council for the corporation

Finances – Sections and Types

A close evaluation should be undertaken of the types of expenses being allocated by type or section to determine the best course of action and business efficiencies.

Types

Contributions are allocated by type under the *Strata Property Act* if:

- The bylaws recognize different types of strata lots
- The contribution is to the operating fund
- The contribution relates to and benefits only one type of strata lot
- A unanimous resolution has not been approved under s.100 or 108(2) providing for a different allocation

(Section 6(4) of the *Strata Property Regulation* and ss.100 of the *Strata Property Act*).

Do the Bylaws Establish Different Types of Strata Lots? When creating the bylaws, the strata corporation must be careful to create proper types. In *Smith v. Strata Plan VIS 4673*, the bare land strata corporation, at its first annual general meeting at the request of the developer who owned 261 of the 286 strata lots, passed the following bylaw:

..., any Owner, including the Developer, that is the registered owner of three (3) or more strata lots that have unimproved Private Yard Areas, shall be entitled to a 50% reduction of the semi-annual assessment for any such Strata Lot.

At the hearing, those owners who wanted to have the bylaw upheld argued that this was a “types” bylaw, which distinguished between strata lots containing a building from those that remained an empty lot. The Court found that since the bylaw only applied if an owner owned at least three strata lots, the bylaw’s true intention was to adopt a formula to allocate expenses in a manner different from unit entitlement. To do this, a unanimous vote resolution was required, and so, this bylaw was not upheld.

Does the Common Expense Involve a Contribution to the Operating Fund?

- Only contributions to the operating fund may be allocated by type
- Contributions to the CRF or a special levy must be paid by all strata lots
- Only expenses that usually occur once or more per year may be allocated by type
- The Act does not set out how to administer or allocate surpluses or deficits that accrue in the types portion of the approved budget. The bylaws may indicate the function, administration and accounting.
- Types do not require separate trust accounts as the administration is still maintained by the strata corporation (or a type within a section)

(Section 6(4) of the *Strata Property Regulation*, s. 92 of the *Strata Property Act* and *Coupal v. Strata Plan LMS 3259*).

As noted, the creation of types only allows the strata corporation to allocate operating fund expenses. The Court has confirmed that the *Strata Property Act* does not allow a special levy to be allocated by types except if a section 100 unanimous vote resolution has been passed. (*Coupal v. Strata Plan LMS 2503*, 2004 BCCA 552; *Strata Plan LMS 1537 v. Alvarez*, 2003 BCSC 1085; *Strata Corp. LMS 509 v. Andresen*, 2001 BCSC 201; *Wilfert v. Ward*, 2004 BCSC 289; and *Oakley v. Strata Plan VIS 1098*, 2003 BCSC 1700).

Having said that, there have been circumstances where the court has upheld bylaws that allocate contingency reserve funds and special levies by type depending on the historical practice of the strata corporation. (*Strata Plan VR 2654 v. Mason*, 2004 BCSC 685, which dealt with the transition between bylaws adopted under the *Condominium Act* and their interaction with the *Strata Property Act*; *Strata Plan LMS 608 v. Strata Plan LMS 608*, [2001] B.C.J. No. 2116 (Q.L.) (S.C.); *Large v. Strata Plan 601*, 2005 BCSC 1128; and *Fraser v. Strata Plan VR 1411*, 2006 BCSC 1316, where the court held that bylaws that allocated all expenses by type were unenforceable except for the purpose of dealing with repairs related to the building exterior, as the strata lot owners had acted in reliance on the types bylaws).

Expenses which benefit more than one type must be paid by all units even if one type benefits disproportionately, based on the schedule of unit entitlement or any amendment filed in accordance with section 99 or 100 (*Ernest & Twins Ventures (PP) Ltd. and No. 213 Cathedral Ventures Ltd. v. The Owners, Strata Plan, LMS 3259*). Unless there is a different formula established by a unanimous vote resolution pursuant to section 100 of the *Strata Property Act*, the strata corporation may allocate an operating fund type expense that "relates to and benefits" only one type of strata lot by using the following formula:

$$\frac{\text{Unit entitlement of strata lot}}{\text{Total unit entitlement of all strata lots of the type to which the contribution relates}} \times \text{Contribution to operating fund}$$

As noted earlier, types are often created in an attempt to more fairly allocate expenses. However, sometimes the creation of types does not deal with all the perceived unfairness. This can lead to discussions of the degree of benefit an owner obtains from the expense. However, in *Ernest & Twins Ventures (PP) Ltd. v. Strata Plan LMS 3259*, 2004 BCCA 597, the court noted that there was no ability to allocate cost based on the degree of benefit a strata lot received from an expense.

This principle is further illustrated in *Liverant v. Strata Plan VIS 5996*. Mr. Liverant the largest bare land strata lot of the strata corporation. In fact, it was twice the size of the other units, and so, its unit entitlement was about double the other units. The strata

corporation had passed a "types" bylaws, making Mr. Liverant's unit a different type than all of the other strata lots. As a result, Mr. Liverant was responsible for all of the expenses associated with his unit and was exempt from contributing to expenses that related only to other units.

With respect to the remaining expenses, including insurance, legal expenses and other professional services, repairs and maintenance, and expenses related to the water and waste water systems, the strata corporation allocated these to all units based on unit entitlement.

Mr. Liverant brought an application under section 164 of the Act, arguing that he was being treated in a significantly unfair manner because he was over-contributing to common expenses based on the degree of benefit that he received from the expenses. The Court held that, because Mr. Liverant was contributing to common expenses based on the relative unit entitlement of strata lot, there was no significant unfairness:

[22] In my view, there are a number of reasons why the choice of a method for calculating unit entitlement cannot, in and of itself, be grounds for relief under s. 164. Direct compliance with a specific provision of the governing legislation cannot, by definition, be significantly unfair.,,

The Court further held that there was no evidence of a gross inequity in the division of expenses.

Sections

The *Strata Property Act* sets out the formulas for allocating expenses. These are set out below.

Expenses relating solely to strata lots in a section are shared by the owners of the strata lots in the section on a unit entitlement basis. This formula applies to operating fund, contingency reserve fund, and special levy contributions except in two circumstances. If a section has passed a bylaw creating types within the section, this formula does not apply. Similarly, if a unanimous vote resolution has been passed to provide for a different allocation in accordance with section 100 or 108(2)(b) of the *Strata Property Act*, this formula does not apply.

$$\frac{\text{Unit entitlement of strata lot}}{\text{Total unit entitlement of strata lot in the section}} \times \text{total contribution}$$

Sharing Expenses for Limited Common Property

Contribution to the operating fund for limited common property is shared only by owners of strata lots entitled to use that property.

$$\frac{\text{Unit entitlement of strata lot}}{\text{Total unit entitlement of all strata lots in the section entitled to use LCP to which the contribution relates}} \times \text{Contribution to operating fund}$$

For more information please see...
Section 11.2(1) of the *Strata Property Regulation*

Sharing Expenses for Types of Strata Lots in a Section

Contribution to the operating fund for expenditures that benefit only one type of strata lot in a section are shared only by owners of that strata lot type.

$$\frac{\text{Unit entitlement of strata lot}}{\text{Total unit entitlement of all strata lots in the section to which the contribution relates}} \times \text{Contribution to operating fund}$$

For more information please see...
Section 11.2(2) of the *Strata Property Regulation*

Contingency Reserves and Special Levies for Types of Strata Lots in a Section

A proportionate contribution to the contingency reserve or a special levy is calculated as follows:

$$\frac{\text{Unit entitlement of strata lot}}{\text{Total unit entitlement of all strata lots in the section}} \times \text{Total contribution to CRF or special levy}$$

For more information please see...
Section 11.2(1) of the *Strata Property Regulation*

Sharing Expenses Relating to Strata Lots in a Section – Operating Fund & Special Levies

If a section has passed a bylaw taking responsibility for maintenance of portions of some but not all strata lots in a section, a contribution to the operating fund or special levy is shared only by the strata lots to which the contribution or levy relates.

$$\frac{\text{Unit entitlement of strata lot}}{\text{Total unit entitlement of all strata lots in the section to which the contribution or special levy relates}} \times \text{Total contribution to operating fund or special levy}$$

For more information please see...
Section 11.3(1) of the *Strata Property Regulation*

Sharing Expenses Relating to Strata Lots in a Section – Contingency Reserve Fund

If a section has passed a bylaw taking responsibility for maintenance of portions of some but not all strata lots in a section, a contribution to the contingency reserve fund is calculated as follows:

$$\frac{\text{Unit entitlement of strata lot}}{\text{Total unit entitlement of all strata lots in the section}} \times \text{Total contribution to the CRF}$$

For more information please see...
Section 11.3(2) of the *Strata Property Regulation* and ss.100 & 108.2 of the *Strata Property Act*

The above formulas may only be modified by unanimous vote of the strata corporation

Often, the biggest conflict in a sectioned strata corporation involves the determination of which expenses can be allocated to a section. Take for example, landscaping in a strata corporation that contains townhouses and apartments which are housed in separate buildings. There is a clear demarcation between landscaping that surrounds

the apartment building and landscaping that surrounds the townhouses. Could that expense be allocated so that the apartment section pays for the landscaping surrounding the apartment building and the townhouse section pay for the landscaping surrounding the townhouses?

This issue was considered precisely in *Yang v. Strata Plan LMS 4084*. The complex consisted of two high-rise buildings (called the Monte Carlo and the Coronado), comprising apartment-style units; a series of low rise buildings (called the Sonterra) comprising 29 townhouse units; and a mixed-use building (called the Monaco) comprising commercial units, apartment units and townhouse units. The Monaco also contained the amenity rooms, including a Jacuzzi, media room, fitness centre, steam room, resident manager's office, for the use and enjoyment of all owners in the complex. In addition, the parking garage for all the apartment units and the visitor parking for all units was located under the Monaco.

In 2002, the strata corporation adopted bylaws to create 3 sections:

- a commercial section consisting of the 4 commercial units;
- a townhouse section consisting of the units in the Sonterra; and
- an apartment section consisting of all of the apartment units in the Monte Carlo and the Coronado, as well as the residential (apartment and townhouse) units in the Monaco.

In 2006, a new property management firm took over and concluded that neither the budgets nor the bylaws complied with the requirements of the *Strata Property Act*. The bylaws did not set out the governance or administration of each section. They also allocated expenses based on the default formulas under the *Strata Property Act*, which was not how those expenses had been historically allocated. A number of the expenses that were allocated to specific sections were in fact common expenses. A complicating factor was that many of the common areas are located in the Monaco. As a result, all of the unit owners, including the townhouse owners, have access to the Monaco's common amenities and the hallways, lobbies, and entrances leading to those amenities.

The cost of electricity, mechanical, maintenance, fire and alarm maintenance, landscaping services, garbage disposal and recycling, security services and cameras, and irrigation and fountains, all relating to the Monaco, were common expenses but were not designated as such and were not contained in the common budget of the strata corporation. Instead, a percentage formula had been adopted such that each section was responsible for a percentage of the expense. To address these issues, at the 2007 Annual General Meeting, the property manager proposed that these common expenses be moved to the strata corporation's operating budget. No objections were made. However, the townhouse owners ended up paying more in strata fees than under previous budgets.

Shortly thereafter, Mr. Yang became a townhouse owner. He was dissatisfied with the allocation of common expenses, given that the strata fees for his unit increased with the increase in the strata corporation's operating budget. Mr. Yang argued that the townhouse owners should only be responsible for common expenses relating to common property that immediately surrounded the townhouses.

In dismissing Mr. Yang's application, the Court noted that:

[26] There is no reference in the Act to common property of a section, as I have noted earlier, only limited common property. Accordingly, sections cannot set up reserve funds for the purpose of maintaining or repairing common property. The Act does not refer to the obligation of a section to repair and maintain common property as distinct from limited common property. Reading the Act as a whole, it appears that common property of the strata corporation remains the responsibility of the strata corporation to maintain.

The Court then commented that a bylaw was necessary to make a section responsible for any aspect of the common property. Since the strata corporation had never adopted such a bylaw, the strata corporation retained responsibility for the repair and maintenance of all of the common property. As a result, the Court upheld the 2007 re-allocation to provide for all common expenses in the operating budget of the strata corporation since it was made in accordance with the *Strata Property Act* and the strata corporation's existing bylaws.

It should be noted that some strata corporations have created bylaws making a section responsible for the repair and maintenance of common property. Often, the bylaws refer to the section being responsible for repairing and maintaining the common property "appurtenant to or adjoining the strata lots in a section". This wording is used to make the section responsible for its building envelope since the land title office had not recognized the designation of vertical surfaces as limited common property. Until *Yang v. Strata Plan LMS 4084*, 2010 BCSC 453, the issue of whether the *Strata Property Act* actually permits the delegation of responsibility for the repair and maintenance of common property to a section had not been considered.

As noted, the Court concluded that the common property remains the responsibility of the strata corporation to maintain but also notes the possibility, in *obiter*, that a bylaw could be adopted to make a section responsible for common property. As a result, it remains unclear whether a strata corporation can delegate to a section responsibility for repair and maintenance of common property by bylaw.

Mr. Yang also claimed that the 2007 financial re-allocation was "*significantly unfair*" in accordance with section 164 of the Act. Before the re-allocation, the landscaper provided a single invoice that was broken down by building to the strata corporation. Those invoices showed that the landscaping costs associated with the townhouses were

significantly less than the apartment buildings. Mr. Yang complained that it was “*significantly unfair*” that he should have to pay higher strata fees based on the total cost of landscaping for the entire strata corporation. The Court stated:

[41] The petitioner submitted it is unfair that he and other townhouse owners should be required to bear the cost of landscaping to common property and areas away from the townhouses. To use the words of the court in *Shaw [v. Strata Plan LMS 3972]*, there may be some anecdotal evidence or common sense inferences to be drawn that the townhouse owners receive a lesser benefit of some of the common expenses such as fire alarm inspection, landscaping, security and electricity consumption in the Monaco and the other common areas; however there is no evidence of any objective measurement or measure of consumption of these services by the townhouse section in relation to the consumption of those services by the remaining unit owners which would lead the court to conclude that there is any significant unfairness accruing to the petitioner.

The Court concluded that while it may appear unfair to pay common expenses that relate to common areas he does not use, it is not significantly unfair.

Another example is in the *Shaw v. Strata Plan LMS 3972*, 2008 BCSC 453. In *Shaw*, the strata corporation consisted of 23 strata lots, of which 7 were residential and 16 were commercial. The strata corporation’s bylaws created two sections: Commercial and Residential. The unit entitlement and the votes in the strata corporation were split 62% and 38% between the Commercial Section and the Residential Section, respectively.

From 2000 to 2005, the president of the strata council was a principle of the developer, who still owned the commercial units. During that period, and until only very recently, there were no strata council meetings and there are no strata council minutes. As a result, the developer controlled the budgets and the allocation of expenses. The residential owners, relying on the advice of the property managers, believed that strata council meetings were not required because the strata corporation had separate sections.

From 2000 to 2006, the budget included expenses allocated to both Sections (the “Combined Budget”), and expenses allocated exclusively to the Residential Section (the “Residential Budget”). During that period, there was no budget for expenses allocated to the Commercial Section. Only the 2007 budget included expenses allocated exclusively to the Commercial Section.

In 2006, the strata corporation started allocating certain expenses between the sections. Water and sewer was allocated 72% to the Commercial Section and 28% to the Residential Section. Repair and maintenance was allocated 47% to the Combined Budget, 23% to the Commercial Section and 30% to the Residential Section.

In February of 2007, the Residential Section installed its own water meter to measure the volume of water consumption by the residential strata lots. The residential owners discovered that only 1% of the water delivered to the strata corporation is consumed by the Residential Section.

In March 2007 the residential owners brought forward a unanimous vote resolution at the AGM to reallocate the expenses in the Combined Budget between the Sections for the fiscal year ending January 31, 2008, and every fiscal year thereafter, the expenses in the Common Area Budget were allocated as follows:

- (1) water and sewer: 80% to the Commercial Section and 20% to the Residential Section;
- (2) all other expenses: 75% to the Commercial Section and 25% to the Residential Section.

The Commercial Section vetoed the Reallocation Resolution and it was defeated.

The over 50% control of the strata corporation by the Commercial Section has resulted in the defeat of any resolutions put before the AGM to redress obvious significant unfairness in the allocation of water and sewer common expenses as well as likely unfairness in other common expense allocations.

It is also clear that the residents benefit in some small degree from the use of water to maintain the landscaping. Some water is also used to clean and maintain walkways and the parking garage. Again, a disproportionate amount of that is used by the Commercial Section, primarily the coffee shops who service persons outside and whose customers cause more spills and other matter which has to be cleaned up.

The Court is able to say that the evidence put forward demonstrates that the allocation of expense for water and sewer as set out in the Resolutions passed at the last two AGMs is obviously significantly disproportionate. Thus to use the majority vote held by the Commercial Section to defeat any resolution to redress this disproportion is significantly unfair.

While there is anecdotal evidence and common sense inferences to be drawn that janitorial service, landscaping, repair and maintenance and other common expenses are

also disproportionately used by the Commercial Section – there is no evidence before this court which would allow the Court to conclude that any disproportionate use of these expenses results in significant unfairness.

The result is that the water and sewer common expenses should be reallocated to redress allocations of a significant unfairness and the other allocations of common expenses, although proved to be unfair cannot, on the material before this Court, be found to be significantly unfair.

Management

With the creation of sections comes the creation of separate legal entities in addition to the strata corporation. Unless otherwise waived or agreed to in writing, each party, including the strata corporation must be represented by a separate agency agreement. Each separate agreement requires that the conditions of agency and requirements of RESA be addressed to create the agency relationship and to address dual/multiple agency relationships. Conflicts of interest can arise when a brokerage is acting for a strata corporation and one or more sections within the strata corporation. As a result, the brokerage should consider how to address those conflicts. Where the brokerage wishes to limit its services, the agreement may need to be amended and the consent of the affected entity must be obtained.

Having separate agency agreements also facilitates the termination of one of the contracts should that become necessary. Also, by separating the contracts, it is easy to allocate management expenses so that each section pays the management fees relating to the section and the strata corporation pays the management fees relating to the strata corporation.

Finally, each entity, the strata corporation and each section must have separate trust funds for operating, contingency and special levy funds as RESA does not permit the pooling of trust funds (Real Estate Services Act – Rules 3-3 1 (f) Section 5-1).