

Dispute Resolution in Strata Properties: A Proposed Tribunal Model under British Columbia's *Strata Property Act*

This public consultation closes on October 31, 2011.

Welcome

This paper introduces a proposed approach to improve the way strata property disputes are resolved in British Columbia.

Strata life brings people of diverse interests, stages of life and backgrounds into close contact. They also become members of a strata corporation governed both by legislated requirements and by bylaws the corporation itself passes. Not surprisingly, disagreements and disputes can sometimes arise. While many can be resolved by the people involved talking about the problem and complying with their responsibilities, sometimes more formal measures are needed.

When issues cannot be resolved informally, the *Strata Property Act* provides a number of mechanisms to resolve disputes, up to and including the Supreme Court for serious matters. However, strata owners have asked for better alternatives to the current options and government has developed a new model.

This document looks at what we have heard from strata corporations, strata owners and stakeholders, the limitations in the current system, and introduces the proposed model for your consideration.

Pop-ups are available throughout the document that link to further information that may be of interest to readers not familiar with the *Strata Property Act*, the courts or approaches to dispute resolution. The paper also provides general background information and discusses changes in [British Columbia's *Strata Property Act*](#).

Through this consultation process the Housing Policy Branch hopes to gather input from interested strata owners, renters, strata council members, strata associations, other stakeholders and the general public.

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Background

Strata Property Amendment Act, 2009

In October 2009 the B.C. Legislature passed amendments to the *Strata Property Act* in [Bill 8](#). The majority of the amendments in Bill 8 were implemented and brought into force in December 2009. These changes included strengthening an owner's ability to rent strata lots, clarifying special levy rules, allowing electronic delivery of strata documents, strengthening conflict of interest disclosure requirements and lowering voting thresholds for calling general meetings or proposing resolutions.

The outstanding amendments from Bill 8 focus on improving accountability through audited financial statements, disclosure statements and depreciation reports, and improving strata dispute resolution.

Informed by an [earlier public survey](#), new government [regulations](#) are being drafted to bring into force the detailed requirements for depreciation reports, audited financial statements and better disclosure of parking and storage. These regulations should be published this fall.

Bill 8 laid out government's intention to design a better system for resolving strata property disputes, but left the design of a new system to be worked out. Considerable work has gone into studying the types of disputes that occur, strata residents' experience with arbitration and the courts, and alternative dispute resolution mechanisms. This survey is intended to get your feedback on the proposed design of an improved system.

Current Strata Property Dispute Resolution Mechanisms:

Under the *Strata Property Act*:

- an owner or tenant can request a hearing at a strata council meeting to discuss matters of concern, request a decision (section 34.1) or answer a complaint against them (section 135(1));
- the strata corporation is required to hold a special general meeting to consider a resolution or other specified matter with the written support of 20 per cent of the strata corporation's votes (section 43);
- a resolution or other matter can be included on a general meeting's agenda with the written support of 20 per cent of the strata corporation's votes (section 46(2)).

Strata corporations can pass and enforce bylaws and rules to regulate themselves as they see fit. Many disputes may be avoided by ensuring that bylaws and rules are clear, comprehensive, well understood, enforceable and appropriately enforced. All bylaws and rules are subordinate to legislation including BC's *Human Rights Code*. Section 29 of the Schedule of Standard Bylaws, if it applies to your strata corporation, permits the strata to refer disputes to a dispute resolution committee if its use is agreed to by all parties involved in the dispute. The Standard Bylaws also provide a way for the strata corporation to remove and replace a council member.

Other dispute resolution mechanisms currently allowed under the *Act* include [mediation](#), [arbitration](#) and court action.

What we Have Heard about Strata Property Disputes

1. Disputes can be extremely upsetting and disruptive to residents of the strata complex.
 - They can pit neighbour against neighbour and create factions.
 - Disputes can be expensive and emotionally draining.
 - Disputes can remain unresolved, or violations continue, for a number of reasons, including the expense involved, lack of support from other owners, unwillingness to commit the time that would be needed, and confusion over how to access what recourse is available. Unresolved disputes can result in dissatisfied owners moving.
 - Strata owners may avoid serving on the strata council and/or avoid strata meetings because of their experience with past or present conflicts within the strata corporation.
2. The complexities of shared ownership and mutual obligations among individual owners and the strata corporation require a good working knowledge of the *Strata Property Act*.
 - Some disputes in stratas occur because the parties to the dispute do not know how to find clear and reliable information on the basic requirements of the *Strata Property Act* and the bylaws of the strata corporation.
 - Strata council members are volunteers and can't be expected to be full-time staff or subject matter experts.
 - Some strata council members are negligent in their duties, seem to wilfully disregard the Act, or abuse their power. Similarly some owners refuse to comply with their responsibilities under the Act or bylaws. There needs to be a better way to hold all parties accountable.
 - There is uncertainty and misunderstanding about the role of strata managers, who may sometimes find themselves involved in disputes.
 - Voluntary dispute resolution committees that are permitted through the Act's Schedule of Standard Bylaws (Section 29) are almost never used and are probably not promising or practical mechanisms to focus on.
3. It is difficult to find a balance between complaints that some see as frivolous and others consider serious.
4. There are limited enforcement mechanisms in the Act, especially in situations where there is a wilful disregard of the Act. Taking court action is seen as an intimidating and expensive option, not suited for all disputes.
5. The current arbitration process (sections 179 -189) is said to be impractical and expensive and is rarely used.
6. While mediation is suitable for many strata property disputes, it is said to be poorly understood and [seldom chosen](#) by the parties.

Proposed Approach to Resolving Strata Property Disputes

After careful consideration of the above information and discussions with a range of stakeholders and organizations involved in strata living, the provincial government is considering the following approach when parties find they are unable to resolve disputes on their own.

The provincial government would create an impartial strata dispute resolution [tribunal](#) with a mandate to receive, review, and resolve strata property disputes.

This tribunal would:

Provide Resources and Information

- The tribunal would provide a central location for information and assistance to resolve strata disputes in a simple, timely and cost-effective manner.
- Direct strata residents (including council members) to resources available to help them understand the Act, their responsibilities and alternate ways of addressing issues or disagreements.
- Publish its decisions on previous cases.
- Advise parties on the most appropriate resolution methods for their dispute.

Provide Formal Dispute Resolution Services

- The tribunal would help parties attempt to negotiate a settlement, and if successful will issue an order to reflect the terms of the agreement. If unsuccessful, the tribunal would make a decision and issue an order that both parties would be required to comply with.
- Tribunal orders will be enforceable in court.
- Based on the experience of other BC tribunals it is expected that a strata dispute resolution tribunal could resolve most disputes in about two months.
- Disputes that are outside of the tribunal's legal jurisdiction would be referred to the BC Supreme Court.

This approach would represent a significant enhancement to the tools currently available to resolve strata property disputes and to enforce compliance with the Act. The process will be easily understood and will be designed for the general public. It is meant to be more “do-it-yourself”, where ordinary people can handle their own cases, whichever side they are on. There will be no restriction, however, on one or both parties to the dispute choosing to hire a lawyer at their own expense.

Tribunal Structure:

Members of the strata dispute resolution tribunal would be appointed by the provincial government for their strata expertise and impartiality.

Scope and Authority:

The tribunal could:

- Issue legally binding decisions, including ordering compliance with the Act
- Compel all parties to appear and call witnesses
- Award costs against a party, where the tribunal feels it is appropriate and regulations allow (this would normally occur only in situations where a party filed a frivolous or vexatious case or abused the tribunal process)

Tribunal decisions would be final and binding and only open to court review in exceptional circumstances.

The tribunal would have jurisdiction to resolve most disputes arising out of the *Strata Property Act*, regulations, the strata corporation's bylaws and rules. These could include disputes involving:

- the prevention or remedying of unfair acts
- the common property or the use or enjoyment of a strata lot
- money owing, including money owing as a fine
- an action or threatened action by, or decision of, the strata corporation or council in relation to an owner or tenant
- the exercise of voting rights by a person who holds 50 per cent or more of the votes
- notices of eviction by the strata corporation
- conflict of interest by a strata council member
- declaring unanimous votes and appointing replacement voters
- approve special levies for repairs needed to ensure safety or prevent significant losses

There are some disputes that should probably be heard in the Supreme Court only. Those are matters involving:

- Liens on property (sections 89, 90, 117)
- Rebuilding damaged property (section 160)
- Appointment of administrator to run a strata corporation (section 174)
- Enforcement of a tribunal order (section 189)
- Orders sought by leasehold landlords (government/public authority) (sections 208, 209)
- Certain developers' issues (sections 226, 232-236)

- Liquidation or wind-up of a strata corporation (sections 279, 284)

Tribunal Costs and Funding:

The tribunal could expect to handle thousands of disputes each year and will require the services of those with expertise in arbitration, mediation and strata law. It is anticipated that these costs will be partially covered through [application fees](#) paid by the parties to the dispute.

The cost and the time taken to resolve the matter through the tribunal will normally be much less than going to court. The tribunal would be able to settle an accepted dispute in about two months and legal representation will not be required.

Additional Information about the Tribunal:

Access to the tribunal would be primarily available by computer. For those without access to a computer, telephone assistance would be available. The work of the tribunal would be primarily conducted in writing and the telephone. Hearings would usually be conducted over the telephone. Tribunal decisions would be posted online. Identifying information will be removed prior to posting.

Resolving Strata Property Disputes Using the Tribunal

Application

Applicant will fill out a request for dispute resolution online and pay the required fee.

Online resources will also be provided that will assist the parties to resolve the dispute on their own.

Notification

The application is reviewed to confirm the tribunal has the right to hear the matter. The tribunal will confirm acceptance and direct the applicant to notify the other party that an application for dispute resolution to the tribunal has been made.

The respondent will submit their response to the application and the tribunal will request any additional information required from both parties.

Conference Call

The tribunal will review the information from both parties and convene a conference call that will explore opportunities for settlement.

Was the matter resolved and a settlement reached?

YES

NO

Mediation / Adjudication

If the parties are unable to resolve the dispute during the conference call, then mediation or a combined mediation/adjudication session will be scheduled.

During this process a resolution will either be mutually reached or decided by the tribunal.

Information and Resolution Posted Online

The tribunal will provide both parties with a report on the outcome and the tribunal's order.

A summary of the application and a report on the outcome of the application will also be posted on the tribunal website – identifying information is removed prior to posting.

What would Change?

<u>Current</u>	<u>Proposed</u>
<p>Mediation is allowed and well-suited for some strata disputes, but is hardly ever used.</p> <p>The Act's "Notice Beginning Arbitration" allows arbitration for some strata disputes, but it can be cumbersome and expensive and is seldom used.</p>	<p>The tribunal would typically try first to reach a mutually acceptable resolution before proceeding to make a binding decision. The private arbitration process under the Act would no longer be needed.</p>
<p>Because there are so few practical and affordable ways of resolving disputes quickly, they often become more entrenched and divisive over time.</p>	<p>It is estimated that, once fully operational, accepted disputes will typically be dealt with by the tribunal in about two months.</p>
<p>Strata councils may not be complying with the Strata Property Act or may be selectively enforcing their own bylaws.</p>	<p>The tribunal will be more accessible and less expensive than a court and will be able to issue orders enforceable in court to ensure compliance.</p>
<p>It is extremely difficult to take a case to Supreme Court without the help of a lawyer.</p>	<p>The tribunal will have most of the powers of a court to adjudicate cases where necessary. Its processes will be designed so that the services of a lawyer are not required. However, one or both parties may choose to hire a lawyer if they wish.</p>
<p>Costs may be awarded in Supreme Court actions.</p>	<p>The tribunal will also have the authority to award costs against a party, where the tribunal feels it is appropriate and regulations allow.</p>
<p>Court fees are waived for persons who cannot afford them.</p>	<p>The tribunal will have the ability to waive fees for those who cannot afford them.</p>
<p>Individuals can directly file certain types of cases in the Supreme Court.</p>	<p>The tribunal would have exclusive jurisdiction over many disputes, but disputes outside of its jurisdiction would go to the Supreme Court. Where appropriate, courts may refer disputes that are filed directly with them back to the tribunal.</p>