

Practice Note 02-12

Land Title and Survey Authority of BC Land Title Division

October 10, 2012

Delineating Common Property

1. BACKGROUND

All strata plans are required to have common property and each registered owner's interest in the common property is noted on every strata lot title. Section 14.11(2) of the *Strata Property Regulations 43/2000* states:

Indefeasible title

14.11 (2) The registrar must include on any indefeasible title for a strata lot, in the legal description, the words "together with an interest in the common property in proportion to the unit entitlement of the strata lot as shown on Form V"...

2. ISSUE

"common property" is defined in section 1 of the *Strata Property Act*, specifically:

"common property" means

- (a) that part of the land and buildings shown on a strata plan that is not part of a strata lot, and
- (b) pipes, wires, cables, chutes, ducts and other facilities for the passage or provision of water, sewage, drainage, gas, oil, electricity, telephone, radio, television, garbage, heating and cooling systems, or other similar services, if they are located
 - (i) within a floor, wall or ceiling that forms a boundary
 - (A) between a strata lot and another strata lot,
 - (B) between a strata lot and the common property, or
 - (C) between a strata lot or common property and another parcel of land, or

(ii) wholly or partially within a strata lot, if they are capable of being and intended to be used in connection with the enjoyment of another strata lot or the common property;

The above definition notes that common property comprises "*that part of the land and buildings shown on a strata plan that is not part of a strata lot...*". Questions have arisen pertaining to strata plans that do not clearly delineate any part of the lands or buildings as common property. In regards to building strata plans, the strata plan must be interpreted to ascertain what part of the lands or buildings do not comprise part of the strata lots in order to identify what comprises the common property.

For example, some land surveyors have prepared building strata plans upon which the buildings are not adjoined and

- No common property is delineated, and
- All of the lands outside of the building are designated to be part of the strata lots (i.e. "private yard areas").

In this circumstance, it is not evident what comprises the common property.

3. PRACTICE

Section 68 of the *Strata Property Act* provides some guidance pertaining to defining the boundaries of strata lots in particular circumstances. Section 68 states:

Strata lot boundaries

68 (1) Unless otherwise shown on the strata plan, if a strata lot is separated from another strata lot, the common property or another parcel of land by a wall, floor or ceiling, the boundary of the strata lot is midway between the surface of the structural portion of the wall, floor or ceiling that faces the strata lot and the surface of the structural portion of the wall, floor or ceiling that faces the other strata lot, the common property or the other parcel of land.

(2) If a strata lot is not separated from another strata lot, the common property or another parcel of land by a wall, floor or ceiling, the boundary of the strata lot is as shown on the strata plan.

(3) A boundary shown on the strata plan must be shown in a manner approved by the registrar.

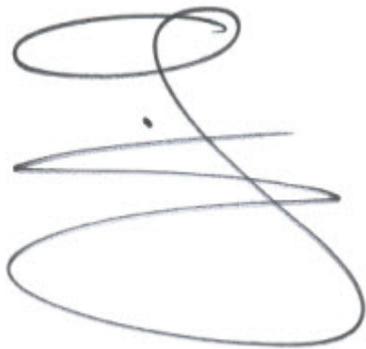
(4) Despite subsections (1) to (3), but subject to the regulations, in the case of a bare land strata plan, the boundaries must be shown on the strata plan

- (a) by reference to survey markers, and*
- (b) in compliance with rules, if any, made under section 75 of the Land Surveyors Act for the purposes of this section.*

In accordance with section 68(3), the boundaries of the strata lots shown on the strata plan "...must be shown in a manner approved by the registrar...". Strata plans that only show the boundaries of strata lots, with no common property delineated, are not shown in a manner approved by the registrar. As noted above, this is because it is not evident what comprises the common property in this circumstance.

Accordingly, land surveyors who prepare building strata plans must ensure part of the lands or buildings are delineated as common property.

Bare Land strata plans must also clearly define what part of the lands comprise common property.

A handwritten signature in black ink, appearing to read "Craig D. Johnston". The signature is fluid and cursive, with a prominent loop at the top and a horizontal stroke across the middle.

Craig D. Johnston
Director of Land Titles