

Practice Note 01-18

Land Title and Survey Authority of BC Land Title Division

February 1, 2018

***Strata Property Act* s. 244(1)(f)(ii) –requirements for portions of buildings that extend beyond the limits of the parent parcel**

1. Issue

The Land Title and Survey Authority of British Columbia (the “LTSA”) has noted variations in the way that strata plans which include parts of buildings that extend beyond the limits of the parent parcel upon which the strata plan is based depict and characterize these encroachments. On different strata plans, the encroaching parts of building have been characterized as any of: a common asset; common property; limited common property; part of a strata lot; or, sometimes, are not depicted on the strata plan at all.

These strata plans often relate to previously occupied “heritage conversions” for which a structural element of the building may have always extended beyond the property boundary, but is only addressed in the land title register when the parcel is subdivided by a strata plan. However, these encroachments can also occur with newly constructed buildings for which registration of a strata plan is intended from the outset. Examples of the types of encroachments seen include balconies, building cornices and other decorative fenestration, bay windows, and foundations or footings that extend past the limits of the parent parcel (*e.g.*, over and onto a road or other adjacent private titled property).

The purpose of this Practice Note is to confirm the LTSA’s requirements for registration of such strata plans.

2. Background: Section 244(1)(f)(ii) *Strata Property Act*

Section 244(1)(f)(ii) of the *Strata Property Act* (the “SPA”) requires that where any part of a building shown on a strata plan is not within the external boundaries of the plan, the plan must be endorsed by a British Columbia land surveyor to confirm that appropriate and necessary easements or other interests exist to provide for access to those parts.

Section 14.5(5) of the *Strata Property Regulation* requires that the endorsement referred to in s. 244(1)(f)(ii) be in Form U, the wording of which in turn requires that the easements or other interests be registered against the affected titles.

Together, these sections typically necessitate the registration of an easement covering the area of the encroachment against the servient tenement (*i.e.*, the neighbouring property or adjacent road), with the dominant tenement being the parent parcel. Compliance with s. 244(1) gives certainty of title to strata lot owners and to lenders who take security in the strata lots.

3. Practice Requirement

The correct label to describe parts of building that encroach beyond the external boundaries of the parent parcel that is subject of the strata plan (*i.e.*, to which s. 244(1)(f)(ii) of the SPA applies) is as a **common asset** of the strata corporation, and not as common property, limited common property or strata lot. The distinction, and correctness of this characterization, arises from the definitions of these terms in the SPA, and from principles of property ownership.

The terms common property and strata lot are both defined in the SPA with reference to the strata plan such that the limits of the parent parcel impose a limit on the boundary of any common property or strata lot:

“**strata lot**” means a lot shown *on a strata plan*;

“**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; [emphasis added]

A portion of building that is outside the external boundaries of the strata plan does not meet the criteria of either definition (NB: the term limited common property is not separately defined in the *SPA* and constitutes a sub-class or specific type of common property). Therefore, no encroaching portion of building may be characterized as strata lot or common property on the strata plan.

The rights created by an easement are limited to ensuring necessary use and access to the encroaching portion of building by the strata corporation or some subset of strata lot owners. By incorrectly including the encroachment area within a strata lot, the strata plan would purport to go beyond this and extend ownership rights in that space. The result is an untenable duplication in title, which brings into question good safe holding and marketable title of that strata lot (NB: A strata lot owner's right to exclusive use of the encroachment area must be addressed elsewhere, such as in an encroachment agreement, the bylaws of the strata corporation or in a separate agreement with the strata corporation.)

In contrast, a common asset is defined in the *SPA* to permit ownership of property that is located outside the parent parcel upon which strata plan's boundaries are based:

"common asset" means

- (a) personal property held by or on behalf of a strata corporation, and
- (b) land held in the name of or on behalf of a strata corporation, that is
 - (i) not shown on the strata plan, or
 - (ii) shown as a strata lot on the strata plan;

4. Conclusion

Strata plans must depict clearly the boundaries of each strata lot and the building's common property as is necessary to establish good safeholding and marketable title. Where parts of building(s) extend beyond the external boundaries of the parent parcel, such parts must be shown with sufficient detail so as to be understandable to reviewers of the plan and to clearly delineate the boundaries of the strata lots and common property within the parent parcel. For the reasons discussed above, the correct label for encroaching parts of building is as a common asset of the strata corporation. Words such as "balcony", "cornice", "bay window" or "foundation" are appropriate descriptors.



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