

ALL COMMUNICATIONS SHOULD BE ADDRESSED TO THE

DIRECTOR OF SURVEYS AND MAPPING

THE REPLY TO THIS LETTER SHOULD BE MARKED
FOR THE ATTENTION OF:



THE GOVERNMENT OF
THE PROVINCE OF BRITISH COLUMBIA

YOUR FILE NO.

Circular Letter No. 252

OUR FILE NO.

DIRECTOR AND SURVEYOR-GENERAL ☒

FIELD OPERATIONS DIVISION

LEGAL SURVEYS DIVISION

MAP PRODUCTION DIVISION

SURVEYS AND MAPPING BRANCH

DEPARTMENT OF LANDS, FORESTS,
AND WATER RESOURCES

VICTORIA, BRITISH COLUMBIA

October 11, 1974.

CIRCULAR LETTER TO BRITISH COLUMBIA LAND SURVEYORS

Dear Sir:

Re: Strata Titles Act, 1974 - Commentary.

Enclosed is a commentary on Strata Titles Act, 1974, by Mr. J. V. DiCastri, Director of Legal Services, Department of Attorney-General. I had mentioned this at some of the Group meetings of B. C. Land Surveyors during the September Board trip, but it was not available in time for distribution with Circular Letter No. 251 and the new B. C. Reg. 534/74.

The Commentary was made for the Practice Manual used by the Registrars of Title and is intended to settle the practice in this area.

However with the several important changes incorporated in the Act, it should also be of assistance to B. C. Land Surveyors engaged in Strata Title Work.

Yours truly,

A. H. Ralfs,
Surveyor-General and Director,
Surveys and Mapping Branch.

Enclosure.

COMMENTARY ON STRATA TITLES ACT, 1974

by J. V. DiCatri,
Director of Legal Services,
Department of Attorney-General.

STRATA TITLES ACT, 1974

On August 2, 1974, the Housing Minister, The Honourable Lorne Nicolson, announced "that the new Strata Titles Act passed at the last session of the legislature has been proclaimed by order-in-council and is now in force. The new Act will facilitate the building of new condominiums and give greater protection to strata owners; it is a complete revision of the original Strata Titles Act passed in 1966.

The new Act gives municipal officials instead of councils the power to approve strata plans for new buildings; (s. 4) but municipal council approval will still be necessary for conversions. More stringent controls are placed on conversions with municipal councils being directed to consider 'the priority of rental accommodation over privately owned housing in the area', provision for the relocation of present tenants, and the life expectancy of the building. Conversions are also prohibited unless buildings substantially comply with the National Building Code. (s. 5)

Other important sections of the new Strata Titles Act allow for 'Phased Development' (Part II) so that it will be possible for a developer to sell certain new buildings as condominiums before a large development is completed. The Act also provides that for the first time in Canada condominiums may be built on leased Crown or municipal land.

Among the measures in the Act that will improve the positions of strata owners are sections that prohibit developers from retaining property, such as parking spaces or recreation facilities in a new condominium, (s. 3(2)) an arbitration procedure for disputes between strata corporations and owners (s. 24) compulsory contingency reserve funds (s. 20) and replacement value insurance by strata corporations, (s. 36) and an eviction procedure to deal with tenants that refuse to comply with the strata corporation's by-laws. (s. 25)"

(Note: section numbers have been added.)

A brief commentary on the Act follows:

(Strata Titles Act cont'd.)

PART I

s. 1(1) "approving officer" - Where this definition applies, a certified copy of the by-law must be filed with the Registrar. Cf. s. 91(2)(a) of the Land Registry Act. Note that under s. 91(2)(b) the appointment of the alternate is by order-in-council

"building" - Note that the definition now includes "support structures". While these are not defined, perhaps an illustration will demonstrate the practical application of this addition to the legislation.

A, the owner in fee simple, is the owner of Lot 1 which is suitable for a mobile-home park. He can now construct one hundred concrete pads and deposit a strata plan in respect of these and call them strata lots.

Under the old Act this was not possible unless the mobile homes were affixed to the land.

When A receives his 100 certificates of indefeasible title for the 100 strata lots he can, for example, sell or lease these to mobile home owners who can simply place on, (or, as the case may be) affix the mobile home to the structure.

Note, that under s. 3(4)(b) the land on which the concrete park rests is part of the strata lot and not part of the common property as is the case with a strata lot in a high-rise or a strata lot in a town-house complex. So, it is assumed, the question of whether a structure erected upon a support structure is a chattel or a

(Strata Titles Act cont'd.)

fixture will be determined by the rules of law applicable to fixtures.

While a mobile-home or trailer park is the most likely development, recreational developments are also possible.

"common property" - Note that this does not include land outside the plan owned by the strata corporation; nor personal assets of the corporation. This definition should be compared with that for "limited common property". On the destruction of the buildings, the assets will, of course, also go to the strata lot owners.

"owner-developer" - He is, in effect, the subdivider.

"phased strata plan" - This introduces a new concept and will be dealt with later. A limited phase concept was permitted in the Victoria office some months ago, although not implemented.

(2) Note the new formula for determining the unit entitlement. The Registrars are not expected to police this requirement.

(3) At this point Reg. 23, which is as follows should be kept in mind:

"Where, under sections 1(3), 3(1)(g), 3(1)(h) and 17(2), the Act requires the authorization of the Superintendent of Insurance at the time of filing the prospectus under the Real Estate Act and the Real Estate Act does not require prospectus to be filed, the matters referred to

(Strata Titles Act cont'd.)

in these sections may be authorized by the Superintendent of Insurance upon an application made to him prior to the deposit of the strata plan."

- s. 2(1) Note the words "subject to this Act".
- (2)(b) Note the alternatives. It is apprehended that the standard of survey for the separate parcels referred to in paragraphs (ii), (iii) and (iv) should be as high as that called for under paragraph (i); i.e., the survey must be of comparatively recent origin.
- (3) A procedure will be settled whereby the Superintendent of Insurance will be advised forthwith of the "serial deposit number" assigned to each strata plan.
- (5) This subsection refers to amendments shown on plan. Having regard to s. 12(7) the intention appears to be to get away from amendments to the strata plan; cf. s. 3(6) of the former Act.

- s. 3(1)(g) "The share of each owner as a tenant in common the property and assets of the strata corporation upon the destruction of the building as referred to in s. 34."

These words, it is assumed, refer to the assets (if any) of the corporation and the common property.

Note, further, that this clause introduces a new formula for determining shares upon the destruction of the

(Strata Titles Act cont'd.)

building. Under the old Act the unit entitlement was fixed for all purposes; under the new Act the original unit entitlement (s. 3(1)(f)) does not apply on the destruction of the building. In this event, the formula is based on "value". It is assumed a Registrar need make no enquiries on this point as the Schedule will previously have been examined by the Superintendent of Insurance and, it is further assumed, noted by him as accepted; see infra.

s. 3(1)(h) The Superintendent of Insurance has instituted the following practice:

(1) Where necessary and practicable Forms 1, 2 and 3 of the strata plan be combined.

(2) Where the strata plan is entirely for residential use (and consequently, Form 3 need not be completed) the combined schedule should contain a statutory declaration as to this use by the owner-developer or his agent duly authorized. A Registrar need make no requisition for the power of attorney or other proof of agency.

(3) In view of Reg. 5(h) the Superintendent will make no enquiry as to the status of an agent referred to in (2), *supra*.

(4) Until the practice of including the statutory declaration in a combined schedule is firmly established, a separate declaration may be filed.

(Strata Titles Act cont'd.)

(5) The Superintendent will advise the Registrars as to which persons are authorized to act as his agent (see Reg. 5(h)).

(6) For the time being, at any rate, the Superintendent will forward all strata plans accepted by him, together with any supporting material directly to the appropriate Registrar and advise the applicant accordingly.

Note: For your guidance, an example, in a size reduced for convenience, of a combined schedule follows:

STRATA TITLES ACT

LOT NO.	SHEET NO.	FORM 1	FORM 2	FORM 3
		SCHEDULE OF UNIT ENTITLEMENT	SCHEDULE OF INTEREST UPON DESTRUCTION	SCHEDULE OF VOTING RIGHTS
		UNIT ENTITLEMENT	INTEREST UPON DESTRUCTION	NUMBER OF VOTES
1	5 AND 7	11930	6989	
2	4 - 7	9208	12471	
3	5 - 7	13347	12471	
4	4 - 8	9514	9325	
5	5 - 8	9467	9325	
6	5 - 8	11890	12021	
7	4 - 8	12667	12471	
8	5 - 8	13237	12471	
9	4 - 9	9514	9325	
10	5 AND 9	9467	9325	
11	5 - 9	11890	12021	
12	4 - 9	12667	12471	
13	5 - 9	13237	12471	
14	4 - 10	9514	9325	
15	5 - 10	9467	9325	
16	5 - 10	11890	12021	
17	4 - 10	12667	12471	
18	5 - 10	13237	12471	
19	4 - 11	9514	9325	
20	5 AND 11	9467	9325	
21	5 - 11	11890	12021	
22	4 - 11	12667	12471	
23	5 - 11	13237	12471	
24	4 - 12	9514	9549	
25	5 - 12	9467	9549	
26	5 - 12	11890	12246	
27	4 - 12	12667	12695	
28	5 - 12	13237	12695	
29	4 - 13	9514	9549	
30	5 AND 13	9467	9549	
31	5 - 13	11890	12246	
32	4 - 13	12667	12695	
33	5 - 13	13237	12695	
34	4 - 14	9514	9549	
35	5 - 14	9467	9549	
36	5 - 14	11890	12246	
37	4 - 14	12667	12695	
38	5 - 14	13237	12695	
39	4 - 15	9514	9549	
40	5 AND 15	9467	9549	
41	5 - 15	11890	12246	
42	4 - 15	12667	12695	
43	5 - 15	13237	12695	
44	4 - 16	9514	9549	
45	5 - 16	9467	9549	
46	5 - 16	11890	12246	
47	4 - 16	12667	12695	
48	5 - 16	13237	12695	
49	4 - 17	9514	9549	
50	5 AND 17	9467	9549	
51	5 - 17	11890	12246	
52	4 - 17	12667	12695	
53	5 - 17	13237	12695	
54	4 - 18	9514	9549	
55	5 - 18	9467	9549	
56	5 - 18	11890	12246	
57	4 - 18	12667	12695	
58	5 - 18	13237	12695	
59	4 - 19	9514	9549	
60	5 AND 19	9467	9549	
61	5 - 19	11890	12246	
62	4 - 19	12667	12695	

STRATA PLAN -----

STRATA TITLES ACT

LOT NO.	SHEET NO.	FORM 1		FORM 2		FORM 3	
		SCHEDULE OF UNIT ENTITLEMENT		SCHEDULE OF INTEREST UPON RESTRICTION		SCHEDULE OF VOTING RIGHTS	
		UNIT ENTITLEMENT		INTEREST UPON RESTRICTION		NUMBER OF VOTES	
63	5 19	13237		12695			
64	4 20	9514		9549			
65	5 20	9487		9549			
66	5 20	11890		12246			
67	4 20	12667		12695			
68	5 20	13237		12695			
69	4 21	9514		9549			
70	5 AND 21	9487		9549			
71	5 21	11890		12246			
72	4 21	12667		12695			
73	5 21	13237		12695			
74	4 22	9514		9775			
75	5 22	9487		9775			
76	5 22	11890		12246			
77	4 22	12667		12920			
78	5 22	13237		12920			
79	4 23	9514		9775			
80	5 AND 23	9487		9775			
81	5 23	11890		12246			
82	4 23	12667		13145			
83	5 23	13237		13145			
84	4 24	9514		10111			
85	5 24	9487		10111			
86	5 24	11890		12695			
87	4 24	12667		13819			
88	5 24	13237		13819			
AGGREGATE		1,000,000		1,000,000			

STATUTORY DECLARATION

I/WE the undersigned do solemnly declare that

- (1) I/we the undersigned (am/are) the owner-developer,
 or (in the alternative) the duly authorized agent
 of the owner-developer.
- (2) The strata plan is entirely for residential use.

I/WE make this solemn declaration conscientiously
 believing it to be true, and knowing that it is of
 the same force and effect as if made under oath.

DECLARED before me
 etc.

Accepted as to forms 1, 2 and 3

SUPERINTENDENT OF INSURANCE

(Strata Titles Act cont'd.)

- s. 3(1)(g) and (h) Reg. 23 appears to be a transitional provision to take care of applications made to the Superintendent of Insurance prior to the proclamation of the Real Estate Amendment Act, 1974 (Bill No. 124).

However, it should be noted the Real Estate Act only requires prospectuses for strata plans of five or more units. Thus, when it is proclaimed, some strata plans will not require prospectuses, so that even after the Act is proclaimed, some schedules will be submitted to the Superintendent of Insurance in pursuance of Reg. 23.

- (1)(i) Note the express requirement that the address be one "at which documents may be served". The endorsement should so state; cf. B.C. Reg. 196/66, s. 5(s).

- (2) The subsection corrects an obvious mischief and Registrars will request a strict compliance.

- (4)(c) While a Registrar is given a wide discretion here, it is assumed that the final result will be reflected expressly and clearly on the strata plan itself. It is recommended that the words "private yard areas" be read restrictively, i.e., limited to the curtilage of the dwelling.

The former practice of requiring the monumentation of these areas and the requirement that the strata plan contain a surveyor's oath (Form L) are discontinued.

(Strata Titles Act cont'd.)

- s. 3(5)(d) While the definition of "owner" is restricted to an owner in fee simple, (cf. Reg. 5(h)) it is considered that the plan should also be signed by, or consents obtained from, all chargees as the deposit of a strata plan effects major changes in their holdings. Cf. s. 3(1)(b) of the Ontario Act which requires "the consent of all persons having registered encumbrances . . .".

The mortgagee's consent will normally appear below the affidavit at the end of the combined Forms 1, 2 and 3; see example herewith.

- s. 4 Permits approval of a proposed strata plan prior to construction of a new building. However, the strata plan cannot be deposited until the building is constructed: see s. 3(5)(a) and s. 4(1)(b).

Also, note the approval takes the form of a certificate: see Form 10 of Reg.

- s. 5(1) Municipal or regional approval is required in the case of a conversion to strata lots.

A strata plan is not to be accepted for deposit where an approval by an approving authority is given subject to conditions until s. 5(4) is complied with, i.e., the approving officer certifies the conditions have been complied with.

However, this does not appear to be a practical problem as it is expected that the certificate of approval will not be given to the applicant until any terms and conditions imposed are fulfilled. Thus, Registrars should not be presented with strata plans until that time.

(Strata Titles Act cont'd.)

- s. 6 A registrar need not go behind the approval.
- s. 7(1) Marginal note should, apparently, be
and "Dealings by strata corporation".
(2) Note that the acquisition of land
 outside the plan as an asset of the
 corporation will also be noted on the
 page of the plan provided for dealings
 with the common property.
- (3) It appears, that the prohibition is
 not directed against a mortgage by
 the owner.
- Note, that the certificate must be
 presented within three months of its
 date, but apparently, need not be
 under seal.
- This subsection might, perhaps, have
 been a separate section; i.e., part
 of s. 22.
- s. 8(3) The practice set out in Reg. 8(2)
 will be followed as to plans deposited
 under the new Act.
- As to the practice followed under the
 old Act, it is recommended, in the
 interest of uniformity, that when a
 certificate of title, issued under
 this Act, goes forward, the new format
 set out in Reg. 8(2) be substituted.
- It may be that consideration should be
 given to eliminating all reference to
 the unit entitlement.
- s. 9(2)(b) Note that "owners" may now include
and (11) lessees and sublessees, provided
 s. 36(4) is applicable. For all

(Strata Titles Act cont'd.)

- s. 6 A registrar need not go behind the approval.
- s. 7(1) Marginal note should, apparently, be
and "Dealings by strata corporation".
(2) Note that the acquisition of land outside the plan as an asset of the corporation will also be noted on the page of the plan provided for dealings with the common property.
- (3) It appears, that the prohibition is not directed against a mortgage by the owner.
- Note, that the certificate must be presented within three months of its date, but apparently, need not be under seal.
- This subsection might, perhaps, have been a separate section; i.e., part of s. 22.
- s. 8(3) The practice set out in Reg. 8(2) will be followed as to plans deposited under the new Act.
- As to the practice followed under the old Act, it is recommended, in the interest of uniformity, that when a certificate of title, issued under this Act, goes forward, the new format set out in Reg. 8(2) be substituted.
- It may be that consideration should be given to eliminating all reference to the unit entitlement.
- s. 9(2)(b) Note that "owners" may now include
and (11) lessees and sublessees, provided s. 36(4) is applicable. For all

(Strata Titles Act cont'd.)

practical purposes, then, A, the owner in fee simple of Lot 1, Plan 1000, can, e.g., now deposit a strata plan of 100 strata lots and obtain 100 certificates of title, and subsequently grant leases for three years or more and the lessees become "owners" (deemed) subject to the limitations in s. 9(11).

Note: that s. 9(11) speaks of an assignment; this, of course, refers to the deemed assignment under s. 36(4).

Note also, that s. 36(4) appears to include purchasers under an agreement of sale; not so, s. 9(2). If there is a problem, it can be overcome by a vendor giving the purchaser a conveyance and taking back a mortgage.

Note also, the prohibition (s. 20(4) Landlord and Tenant Act) against leases in excess of three years unless supported by municipal council or regional board approval. In this context, also consider Bill 155, the Landlord and Tenant Amendment Act, 1974.

s. 9(5) Note that by s. 14 the power of the strata corporation to acquire land "to be added to the common property" has been widened to permit also an acquisition "as an asset of the strata corporation": see s. 14(1).

(6) Note that a judgment against a strata corporation is "deemed to be a judgment against the owners". Registration, therefore, would be against each of the owners as well as against the corporation. It would seem advisable

(Strata Titles Act cont'd.)

practical purposes, then, A, the owner in fee simple of Lot 1, Plan 1000, can, e.g., now deposit a strata plan of 100 strata lots and obtain 100 certificates of title, and subsequently grant leases for three years or more and the lessees become "owners" (deemed) subject to the limitations in s. 9(11).

Note: that s. 9(11) speaks of an assignment; this, of course, refers to the deemed assignment under s. 36(4).

Note also, that s. 36(4) appears to include purchasers under an agreement of sale; not so, s. 9(2). If there is a problem, it can be overcome by a vendor giving the purchaser a conveyance and taking back a mortgage.

Note also, the prohibition (s. 20(4) Landlord and Tenant Act) against leases in excess of three years unless supported by municipal council or regional board approval. In this context, also consider Bill 155, the Landlord and Tenant Amendment Act, 1974.

- s. 9(5) Note that by s. 14 the power of the strata corporation to acquire land "to be added to the common property" has been widened to permit also an acquisition "as an asset of the strata corporation": see s. 14(1).
- (6) Note that a judgment against a strata corporation is "deemed to be a judgment against the owners". Registration, therefore, would be against each of the owners as well as against the corporation. It would seem advisable

(Strata Titles Act cont'd.)

in all dealings with a strata lot that a search for judgments against, inter alia, the strata corporation be made.

s. 10 Does not directly concern a Registrar.

s. 11 Does not directly concern a Registrar.

s. 12(7) The former s. 8(6) required an amendment to the strata plan; under the new s. 12(7) it appears sufficient to "note the transfer on the page of the strata plan that refers to the common property".

s. 13(6) and (7) Any grant would, of course, be to the strata corporation; cf. s. 14(1). Note that the resolution referred to is that of the council, i.e., it is not a special or unanimous resolution.

s. 14(1) Note the wide powers of acquisition given the strata corporation. It appears that the words "may include a strata lot within a strata plan" means any strata plan. Note also, the word "adjacent" is a wider term than the word "adjoins".

(3) Assets, other than additional common property acquired by the corporation, will be noted "on that page of the strata plan that refers to dealings with the common property".

s. 15 Does not directly concern a Registrar.

s. 16 Does not directly concern a Registrar.

(Strata Titles Act cont'd.)

s. 17(2) This must be read with Reg. 23. It may be noted that a difficulty presently exists in relation to changes in by-laws under the old Act in respect to a strata plan deposited under the old Act. Strictly speaking, these cannot be changed with the authority of the Superintendent of Insurance as his authority is limited to applications made prior to the deposit of the strata plan. The other alternative, namely the existence of a permanent council, is not available because a change in by-laws is necessary to provide for a permanent council.

However, it is considered, at any rate, where no strata lots have been sold by the developer, he be permitted to amend with the consent of the Superintendent; providing, of course, this official is prepared to assume an interim jurisdiction.

(3) Note further that by-laws of commercial strata plans cannot be changed before the plan is deposited at the Land Registry Office.

(6) Note that amendments to Second Schedule by-laws must now be filed with the Registrar.

s. 18 Some enquiry by the Registrar is necessary here. On an application to register a lease of a strata lot in a residential strata plan the strata corporation should file a certificate (which need not be under its seal) stating that no by-law has been passed under this section; see also s. 25(2).

(Strata Titles Act cont'd.)

Note that subsections (2) and (3) qualify an owner's indefeasible title and do not appear to operate retrospectively. It is assumed, that while the number of owners who lease may be limited, the legislation does not go so far as to limited the powers of these owners to lease, e.g., by forbidding them to grant a lease to a family with children.

- s. 19 Does not directly concern a Registrar.
- s. 20 Does not directly concern a Registrar.
- s. 21(2) Form B is registered as a charge in priority to all others except those of the Crown and those rights conferred by Mechanics' Lien Act.
- s. 21(4) Form C, cancellation of Form B. Note, both forms should contain substitute particulars.
- While some flexibility may be allowed here, the strata corporation affected should be advised that any future submission must contain the particulars, i.e., do not reject but educate.
- s. 22 Does not directly concern a Registrar; but cf. s. 7(3).
- s. 23 Does not directly concern a Registrar.
- s. 24 Does not directly concern a Registrar.
- s. 25 A certificate (which need not be under seal) of the corporation stating com-

(Strata Titles Act cont'd.)

pliance with this section is indicated here; see also s. 18(2).

s. 26 Does not directly concern a Registrar.

s. 27 Does not directly concern a Registrar.

s. 28 Does not directly concern a Registrar; in any event section not proclaimed as yet.

s. 29(1) Does not appear to raise questions of title; in any event, appears to be tied in, but not exclusively, with s. 28. However, any area could be designated as limited common property (e.g., a roof garden shared by the penthouses, the common backyards of townhouses) without a separate section being formed.

It is expected that before a filing is accepted by the Registrar, a check will be made to see there is no subsisting exclusive use granted to an owner under s. 29(2). If one is found, it should be determined by a resolution of the strata corporation: by-law 3(f).

(2)

It would appear useful to make, also, a note on the page of the strata plan that refers to dealing with the common property. Observe that the nature of this "exclusive use" is not defined.

s. 30 Does not directly concern a Registrar.

(Strata Titles Act cont'd.)

- s. 31 This section contains the formula for re-subdivisions and should be followed strictly.
- s. 32(1) The requirement of Court approval has been removed.
- (3) Note words added to remove doubts, after "explanatory plan", "that need not be based on a survey"; i.e., a new ground survey is not necessary to consolidate. However, uniformity requires that the explanatory plan be prepared by a British Columbia Land Surveyor.

Where strata plans have already been deposited and the owner-developer proposes to go the phased strata plan route he amalgamates as provided in s. 50.

A suggested form of amendment to the certificates of title is as follows:

"Note: The land herein, by virtue of s. 32 of the Strata Titles Act, is now known as Strata Lot 1, District Lot 72, Sayward District, Strata Plan No. 143 (with Strata Plans No. 94 and 125), together with an interest in the common property in proportion to the unit entitlement of the strata lot as shown on Form 1.

Dated this day of

Registrar"

The original description will not be struck out at this time but, of course, will be dropped when the title goes forward.

(Strata Titles Act cont'd.)

s. 33 Does not directly concern a Registrar.

s. 34(1) While it may be that some inequities might result to the minority which opposes the special resolution, a requirement of unanimity could make the legislation unworkable.

This section, as did the old s. 13, deals with the actual physical destruction of the building. But note, the special resolution is now filed with the Registrar only if the strata corporation resolves not to rebuild.

(2) Form 7 should be supported by a certified copy of the special resolution and filed with the strata plan. The plan is not cancelled.

The entry required is made on the sheet of the strata plan headed "Dealings affecting the common property": see Reg. s. 16. The style of entry is as follows:

"Form 7 (Notification of Destruction) (or, as the case may be) deemed destruction of building, lodged _____.
date

Registrar"

In order to give notice to persons searching the register, the entry is also made on the face of each certificate of title to a strata lot.

Reg. 17(2) requires the Registrar to mail a copy of Form 7 to the appropriate taxing authority.

(Strata Titles Act cont'd.)

s. 34(3) It is considered this section falls short of a statutory vesting notwithstanding the language in Reg. 17(1). This view means that the certificates of title to the strata lots are not cancelled, nor, at this point, are new certificates issued in the names of the owners as tenants in common in terms of s. 2(2)(b). The question of registered charges subsisting against the strata lots is inextricably tied up with the operation of subsection (3): see infra.

However, it is clear that at this stage, there is no building and dealings with the strata lots, as such, have come to an end; each owner is now a tenant in common of the land included in the strata plan under the lands pre-strata plan designation with a right to call for a transfer from the strata corporation.

The strata corporation may transfer the land included in the strata plan to the owners, or they, by special resolution, can direct the corporation to transfer the land to a third party.

A transfer of part of the land within the strata plan would constitute a subdivision and Part VI of the Land Registry Act would apply.

Note, that in respect of a strata plan filed under the new Act, s. 34(3) provides that the shares of the tenants in common are to be apportioned in accordance with the schedule filed pursuant to s. 3(1)(g), i.e., the "value" formula and not on the unit entitlement, i.e., the "square footage" formula.

(Strata Titles Act cont'd.)

s. 34(3) It is considered this section falls short of a statutory vesting notwithstanding the language in Reg. 17(1). This view means that the certificates of title to the strata lots are not cancelled, nor, at this point, are new certificates issued in the names of the owners as tenants in common in terms of s. 2(2)(b). The question of registered charges subsisting against the strata lots is inextricably tied up with the operation of subsection (3): see infra.

However, it is clear that at this stage, there is no building and dealings with the strata lots, as such, have come to an end; each owner is now a tenant in common of the land included in the strata plan under the lands pre-strata plan designation with a right to call for a transfer from the strata corporation.

The strata corporation may transfer the land included in the strata plan to the owners, or they, by special resolution, can direct the corporation to transfer the land to a third party.

A transfer of part of the land within the strata plan would constitute a subdivision and Part VI of the Land Registry Act would apply.

Note, that in respect of a strata plan filed under the new Act, s. 34(3) provides that the shares of the tenants in common are to be apportioned in accordance with the schedule filed pursuant to s. 3(1)(g), i.e., the "value" formula and not on the unit entitlement, i.e., the "square footage" formula.

(Strata Titles Act cont'd.)

However, with respect to a strata plan deposited under the former Act, s. 66(2)(a) of the new Act provides that unit entitlement, as established by s. 4(1)(f) of the former Act, continues to apply unless the strata plan deposited under the former Act becomes part of a phased strata plan when the new formulae will apply.

The question of charges (e.g., CMHC mortgages) subsisting against strata lots prior to an entry being made under s. 34(3) is not free from difficulty.

At the outset, s. 34(1) suggests that voting rights acquired by mortgagees under s. 11 cannot be exercised in respect to the special resolution; cf. s. 35(1)(a).

However, it is reasonably clear that these charges do not evaporate. Subsection (5) appears to contemplate the release of all outstanding charges (not omnibus charges, such as restrictive covenants and undersurface rights) so as to permit a transfer of the unencumbered fee simple to a third party, or to the owners.

In some jurisdictions a subsisting charge registered against a strata lot attaches to the undivided interest of the owner to which he becomes entitled to upon the destruction of the building. However, in the absence of such a statutory provision it would seem inequitable to proceed with the special resolution without the consents of the chargees.

Where the matter gets before the Court, it is assumed the interests of chargees will be amply protected.

(Strata Titles Act cont'd.)

In the result, where these charges exist, they must be discharged and the discharges produced before effecting registration of a transfer.

s. 34(8) It is unclear whether, notwithstanding s. 34(8), a sale tainted with mala fides may be impeached and give an owner a right of action for damages. In any event, this is not a problem for the Registrar.

(9) Where the Form 7 and a transfer are tendered concurrently to a Registrar, the Registrar shall make the entry on the strata plan as required by s. 34(2).

(10) No provision is made for the reclamation owner who refuses to deliver up his duplicate certificate of title.

The procedure under ss. 135 and 136, Land Registry Act, seems appropriate.

(11) While the legislation is not in mandatory terms, in order to tie up the loose ends, the applicant is required to obtain an order from the Court dissolving the strata corporation and to produce the order on the application to register the transfer, assuming it is a transfer of all the land in the strata plan. If the transfer covers only part of that land, then the order should be produced with the transfer of the final remainder.

s. 35 This section deals with the deemed destruction of the building. Where a special resolution is passed under s. 35(1)(a) it would seem that resort must be had to s. 34 as the results flowing from the special resolution are not stated in the section.

(Strata Titles Act cont'd.)

For all practical purposes, then, the procedures in s. 34 will apply mutatis mutandis, to a deemed destruction effected by a special resolution.

It is assumed, although the legislation does not say so, that pending the transfer of the land within the strata plan, the strata corporation subsists until dissolved, that each strata lot owner retains the right to occupy his strata lot subject to his statutory obligations and that the council continues to function.

- s. 36(1) This subsection must be read with s. 25; the latter section qualifying the owner's right to assign. Also, see s. 9(2) and (11) - "owners" may include lessee or sub-lessee.
- (4) It would appear that s. 25 does not apply to subsection (4); the latter being complementary to s. 9(2) and (11).
- s. 37(4) Strata corporation to notify Registrar of change of address who will note same on plan. At the present time no fee is required.
- s. 38 Appointment of Administrator.
- s. 39(1) One vote to a residential strata lot; this is the principle.
- s. 40 Court applications are made to a Judge of the Supreme Court in Chambers.

(Strata Titles Act cont'd.)

- s. 41 Rule against perpetuities does not apply. While it perhaps can be argued that this section frees, for example, all options to purchase from complying with the rule, the better view, it is thought, is that the section applies to statutory documents only, e.g., the by-laws and the option made under s. 54 of the Act.

PART II

Phased Strata Plans

- s. 42(1) Introduces the concept of a "phased strata plan". Does not apply to leasehold strata plans: s. 51(2).
- (2) Note that while Form E suggests it may be filed by the holder of a right to purchase, it is assumed the concurrence of the vendor is a condition precedent to the deposit of a phased strata plan. There appears to be no objection to filing Form E prior to the deposit of the strata plan. In this event, Form E should be filed under the DF series and a note thereof made on the face of the title, e.g., "Declaration of intention to create a strata plan by phased development (Form E) filed _____ under No. _____".

The sketch plan filed with Form E is sufficient if it indicates the overall plan of development.

It is assumed, that at this point, s. 2(2)(b)(i) will have been complied with and that a strata plan will be filed for each phase.

(Strata Titles Act cont'd.)

- s. 41 Rule against perpetuities does not apply. While it perhaps can be argued that this section frees, for example, all options to purchase from complying with the rule, the better view, it is thought, is that the section applies to statutory documents only, e.g., the by-laws and the option made under s. 54 of the Act.

PART II

Phased Strata Plans

- s. 42(1) Introduces the concept of a "phased strata plan". Does not apply to leasehold strata plans: s. 51(2).
- (2) Note that while Form E suggests it may be filed by the holder of a right to purchase, it is assumed the concurrence of the vendor is a condition precedent to the deposit of a phased strata plan. There appears to be no objection to filing Form E prior to the deposit of the strata plan. In this event, Form E should be filed under the DF series and a note thereof made on the face of the title, e.g., "Declaration of intention to create a strata plan by phased development (Form E) filed _____ under No. _____".

The sketch plan filed with Form E is sufficient if it indicates the overall plan of development.

It is assumed, that at this point, s. 2(2)(b)(i) will have been complied with and that a strata plan will be filed for each phase.

(Strata Titles Act cont'd.)

In discussing with the Chief, Legal Surveys, the question as to whether the boundaries between the various phases should be monumented, it was concluded this could be safely dispensed with.

- (3) The concern here is for building inspectors who may get themselves tied in knots because a phase is going to be subdivided off from a parcel before it is subsequently consolidated with the parcel again. Section 43(1) does not mean there is any deemed consolidation of non-adjoining parcels.

s. 43(4) A notice of election not to proceed is filed with the Registrar who endorses a note thereof on Form E. The notice should contain a statement that the strata corporation and approving officer have been advised of the election.

The legislation provides for a deemed election not to proceed (s. 43(8)) and a deemed election to proceed (s. 43(b)).

Where Form E has been deposited concurrently with the phased strata plan, Form E will not take a distinctive number of its own; the strata plan number will apply.

s. 44 The question of unit entitlement appears to present no problems.

s. 45 Does not directly concern a Registrar.

s. 46 Does not directly concern a Registrar.

(Strata Titles Act cont'd.)

s. 47 Does not directly concern a Registrar.

s. 48 While this section does not directly concern a Registrar, it should be read with s. 42(3).

s. 49 Does not directly concern a Registrar.

s. 50 This section should be read with s. 32 and s. 66(3) and permits already deposited strata plans to be converted to a phased strata plan.

Apart from requisitioning the material required, the Registrar will amend the existing certificates of title and otherwise adopt, with the necessary changes in detail, the procedure outlined in s. 32(3)(e). The existing certificates of title will be amended only and not cancelled.

The form of amendment is as follows:

"Note: The land herein, by virtue of ss. 32 and 50 of the Strata Titles Act, is now known as Strata Lot 1, District Lot 72, Sayward District, Strata Plan No. 148 (with Strata Plans No. 94 and 125), together with an interest in the common property in proportion to the unit entitlement of the strata lot as shown on Form 1.

Dated this day of

Registrar"

This section, it is thought, should be given a liberal interpretation so as

. (Strata Titles Act cont'd.)

to include within its ambit those cases where the owner-developer has sold some of the strata lots as well as the case where the owner-developer has made no sale, i.e., where all the strata lots remain registered in his name.

PART III

Leasehold Strata Plans

s. 52 This section envisages the Crown, for example, being the registered owner of Lot A, Plan 1000 and B, a registered ground lessee for a term of at least 50 years. B, the owner-developer, then tenders to the Registrar a Leasehold Strata Plan in respect of, e.g., 100 strata lots carved out of the said Lot A. The consent in writing of the lessor is required.

s. 53(1) Continuing with the foregoing example,
and
(2) (a) 100 certificates of indefeasible title will issue in the name of the Crown in respect of the strata lots,

(b) on each certificate of title will be endorsed the lease in favour of the owner-developer with a note in the "Remarks Column":
"Pt. III, Strata Titles Act".

However, as a result of the statutory conversion, the charge will not be endorsed as "inter alia". Neither will any reference be made on the title to the statutory option to purchase (s. 53(4)).

(Strata Titles Act cont'd.)

- (3) This subsection calls for a procedure analogous to s. 173 of the Land Registry Act notwithstanding the form of the leasehold certificate of title departs somewhat from Forms S and T.

However, the procedure is amended to the extent necessary to show charges (if any) against the lease but not against the reversion. While it is unlikely in the situations envisaged by the legislation that the lessee's title will be encumbered, it would be unwise to omit a search of the lessor's title when investigating that of the lessee.

- (4) It is assumed that the form of model lease (s. 53(2)) will contain a reference to the statutory option to purchase; this will not be referred to specifically on the certificate of title but will be considered to be comprehended within the reference thereon to "Pt. III, Strata Titles Act".

- s. 54 The schedule referred to in this section is, apparently, the one discussed at length in s. 56. It must be filed with the leasehold strata plan:
s. 54(2)(a) and s. 56(2)(a).

Section 54(3) provided for the filing of an amended schedule.

- s. 55 This section presents no problems, at any rate, for the immediate future.

- s. 56 The schedule of restrictions will not, apparently, prohibit the assignment of a lease without the consent of the

(Strata Titles Act cont'd.)

lessor. The lease can be freely assigned, except that, if the schedule should so provide, it could be assigned only for a price arrived at on the basis of a formula, i.e., controlled resale, or assigned to certain categories of people, e.g., families with two children, families earning less than \$8,000.00.

s. 57 Does not directly concern a Registrar.

s. 58 This section should be read with s. 52(e).

s. 59 Does not directly concern a Registrar.

s. 60 Note that under this section "the assets of the strata corporation" do not include the land within the strata plan.

s. 61 Note that if there is no re-building the land reverts to the lessor.

s. 62 This section limits the operation of s. 35(1) and (2) to the case where the building has been damaged or destroyed to an extent in excess of one-third of its value.

This means other forms of notional destruction are excluded.

Subsection (2) of s. 62 further amended s. 35.

s. 63 Does not directly concern a Registrar.

(Strata Titles Act cont'd.)

s. 64 Power to make regulations.

s. 65 Wife's Protection Act applies, but
not Plans Cancellation Act.

s. 66(1) The old Strata Titles Act is repealed.

(2)(a) Note the unit entitlement under the
old Act applies to a strata plan
deposited under that Act; likewise,
the by-laws, subject as provided in
s. 66(2)(b), and subject further as
provided in s. 66(3) where the said
strata plan becomes part of a phased
strata plan.

(4) Note this subsection permits a strata
plan to be amended in the circum-
stances outlined.

Schedules There are four Schedules to the new
Act.