

This sample is taken from *British Columbia Strata Property Practice Manual*.

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A. ACTING FOR STRATA LOT OWNERS AGAINST A STRATA CORPORATION [§24.34]

- **INITIAL ENGAGEMENT BY A STRATA LOT OWNER [§24.35]**

When engaged by a strata lot owner, a lawyer should, in addition to standard client engagement practices for their firm, confirm the nature of the client's interest in the property. Occasionally, clients will represent themselves as owners when they are not the registered owner of the strata lot, or they are one of several registered owners and may not have authority to speak on behalf of all registered owners. Consider the definition of "owner" contained in s. 1 of the Act, which includes only registered owners or qualifying leasehold tenants under s. 199 of the Act, unless there is a registered life estate or registered agreement for sale. If the client claims a beneficial interest, assigned rights of the owner as a long-term tenant, rights arising from a power of attorney on behalf of the registered owner, or some other right in relation to the property, be sure to confirm and scrutinize that claim and consider what authority the client truly has to provide the lawyer with the instructions they propose to issue.

- **COMMUNICATIONS WITH THE STRATA CORPORATION AND ATTENDING A STRATA CORPORATION MEETING AS THE REPRESENTATIVE OF A STRATA LOT OWNER [§24.36]**

When acting for an individual strata lot owner and attending a general meeting or a strata council meeting on their behalf, you should expect that your presence may be unwelcome to some strata council members or other attendees. You should therefore be very certain of your entitlement to be present.

For both annual general meetings and special general meetings, the safest course is to ensure that your client issues a proxy pursuant to s. 56 of the Act, which entitles you to do whatever your client could do at the meeting. Simply relying on the solicitor-client relationship or a power of attorney should not be assumed to be sufficient to gain entry to the meeting with your client despite any argument to the contrary.

If you wish to address the strata council on behalf of your client at a strata council meeting, be aware that most bylaws allow strata lot owners to attend only as observers unless a hearing on the subject to be discussed has been specifically scheduled. Consider the benefit of formally demanding a hearing pursuant to s. 34.1, 135, or 144 of the Act, as applicable, and providing notice in the demand that you intend to attend the hearing as your client's legal counsel.

In either case, if you are aware that the strata corporation is represented by legal counsel, consider whether your attendance requires advance notice or the consent of the strata corporation's lawyer pursuant to Rule 7.2-6 of the *BC Code*. Also, pursuant to Rule 7.2-8 of the *BC Code*, avoid direct communication with individual strata council members or the strata manager unless the strata corporation's lawyer consents, or the specific communication is authorized or required by law. "Consent" as defined in the *BC Code* requires written consent or oral consent confirmed in writing as soon as practicable.

If the strata corporation is not represented by legal counsel, advise the strata corporation of your role and the need to obtain independent legal representation as set out in Rule 7.2-9 of the *BC Code*.

- **PROTECTING A STRATA LOT OWNER CLIENT'S PRIVACY [§24.37]**

Whether a client is applying for a hardship exemption to a rental restriction bylaw or applying for an exemption from a bylaw on the basis of a physical or mental disability, there are occasions where very sensitive information has to be presented to the strata council.

Where a lawyer's representation of an individual involves providing the strata corporation with confidential or sensitive information, they should be sure that they are taking appropriate steps to secure that information in a manner that the records and information will not form a lasting part of the strata corporation's records and be subject to disclosure requirements.

The onus is on the individual seeking an exemption to prove hardship pursuant to s. 144 of the Act, or a disability requiring accommodation pursuant to the *Human Rights Code*. However, if a strata corporation publishes or distributes such sensitive personal details, that itself can be actionable under the *Personal Information Protection Act*, R.S.B.C. 2003, c. 63 or be the subject of further sanctions or adjudication by the Human Rights Tribunal or the Office of the Privacy Commissioner.

One possible solution is to allow for the review of originals of medical reports or financial documents at a hearing, or providing copies of same, on an undertaking to return them after a determination is made. In any event, if the client does not intend to waive privacy, the position of the strata council with respect to what use will be made of the information and documents, and its intentions with respect to retention, use, disclosure, and destruction, should be obtained before sensitive information is provided.

For more information, see chapter 18 (Privacy Issues in Strata Corporations).

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