




# A Buyer's Guide to Strata Corporations

*What A Prospective  
Owner Needs To Know*

JANUARY 1, 2016

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## DOCUMENTS A HOMEOWNER SHOULD HAVE

The intent of this guide is to highlight the documentation that will assist the proprietor in navigating the peculiar intricacies of living within a strata corporation.

When the decision made to purchase a strata property is carried through, it is of necessity that the proprietor maintains a log of documents which relate to the property. These documents should be kept in a safe place, with ease of retrieval should the need arise.

The documents are listed below:

- Copy of Sale Agreement
- Copy of by-laws governing the strata
- Copy of the Strata Plan
- Copy of the Registration (Strata Titles) Act (as amended)
- Copy of the duplicate certificate of title for the unit
- Mortgage documents
- Any management agreement to which the proprietor is a signatory
- Certificate outlining the land tax obligations for the unit
- Estimate of the maintenance budget – this should be received from the Developer in the case of a new development or from the Property Manager, in the case of an existing corporation
- Copy of the electrical and plumbing drawings if available.

## ADVANTAGES OF LIVING IN A STRATA CORPORATION

There are several advantages afforded to a proprietor in a strata corporation.

These include:

- The advantage of owning your own living space while sharing the responsibility for the maintenance of the physical plant and landscape.
- Strata corporations would have some facilities for the proprietor's use which would have been otherwise too expensive for the individual owner to have or maintain, e.g. pools, tennis courts, parking area, etc.
- The responsibilities of ownership can be shared.

## WHAT IS A STRATA CORPORATION?

Strata corporations are governed by the Registration (Strata Titles) Act.

Section 4 (1) of the Registration (Strata Titles) Act provides that:

*The proprietors of all the strata lots contained in a strata plan shall, upon registration of the strata plan, become a body corporate (hereafter referred to as "the corporation") under the name "The Proprietors, Strata Plan No. " (with the appropriate number of the strata plan inserted in the blank space).*

The strata corporation therefore comprises the individual proprietors and does not include lessors. It is created when the developer registers the strata plan with the Office of Titles. The owners must elect an Executive Committee to manage the common area and to carry out the responsibilities on behalf of the corporation. This election occurs at an Annual General Meeting where a report on the affairs of the corporation and a budget are presented.

## COMMON PROPERTY

The corporation therefore allows ownership of an individual strata unit while sharing in the ownership of the common property. The proprietor also shares in the expenses relating to its maintenance and such share is determined by the unit entitlement established on the strata plan. The common property includes such things as the external portions of the physical structure/apartment building, walkways, pool facilities, grounds, parking facilities, recreational facilities, etc. The collective responsibility for the development, inclusive of the common facilities, rests with the corporation as represented by the Executive Committee. This committee administers the by-laws relating to the control and administration of the common property. The proprietors are bound by these by-laws.

The proprietor's interest in the common property is usually noted on the title as a fraction of the whole common property. This fraction is often referred to as the proprietor's unit entitlement. This unit entitlement will determine the fraction of the corporation's common expenses that each proprietor will be required to pay.

## THE CLASSIFICATION AS A STRATA CORPORATION

The classification as a strata corporation does not only relate to the type of construction but to the nature of the ownership which exists. Therefore, an apartment building or town house complex can only be considered a strata corporation if it has been so registered at the Office of Titles under the Registration of Titles Act.

The Strata Plan provides a diagrammatic representation of the location of individual units as well as the common area facilities. Although the units are owned individually, everything outside of these units (not contained within a unit) is considered common property.

Being a proprietor in a strata corporation is significantly different from owning any other type of property investment. There are limitations to what an owner can or cannot do. As part of a 'collective' the proprietor may be required to pay for repairs or improvements to common facilities that he may never have utilized. The scheduling of repairs is not dictated by his individual needs but based on the collective good.



## WHAT IS A STRATA LOT?

When a strata corporation is so registered under the Registration of Titles Act, it identifies on plan the special units to which individual ownership is prescribed. The Registration (Strata Titles) Act further clarifies exactly what the boundaries of the strata lot are:

*The common boundary of any two strata lots or a strata lot and common property shall, unless otherwise specified in the relevant strata plan, be the centre of the floor, wall or ceiling between such strata lots or between such strata lot and common property, as the case may be.*

The proprietor therefore has title to the inner sections of the unit while the corporation has the responsibility for the external sections. The inner sections include from the centre of the walls in, from the centre of the roof of the strata lot down and from the centre of the floor slab up. The external sections include the roof, common plumbing, common lighting and any other amenities that are shared. The nature of the ownership of the units is by way of a strata title. The strata section of the nomenclature refers to the units being on different levels or layers within a defined space relative to other units.



## YOUR UNIT

The proprietor is responsible for the maintenance or remodelling of the internal sections of the strata lot. The unit owner is responsible for repairs to faucets, electrical wiring, etc., that is not used in common with other unit owners. There may be instances where plumbing work may be done by the corporation on common facilities accessed from your apartment. These facilities often include but are not limited to, conduits, drain pipes, cables etc., which are used in common with other units.

The by-laws would establish whether or not the approval of the Executive Committee is required for any remodelling occurring within a strata unit, especially where the common area, the external appearance of the building or the building's structure may be affected. Written permission should always be sought before proceeding to do remodelling exercises.

The proprietor must therefore ensure that he makes himself aware of all the rules relating to undertaking construction activities.

## COSTS ASSOCIATED WITH OWNING A STRATA PROPERTY

### TAXES

The proprietor is responsible for the payment of property taxes ascribed to his individual strata lot. The taxes are calculated on the unimproved value of the property on which the strata corporation is established (shown on the strata plan) as shown on the Valuation Roll established by the National Land Agency. The practice of the National Land Agency is to reflect the proprietor of the first lot as the Person in Possession on the Notice of Valuation. However, all proprietors are liable for the payment of the land tax. It is customary that the tax authorities will allow for individual payment based on unit entitlement.

### INSURANCE

Section 5 (1) of the Registration (Strata Titles) Act determines that the duty of the corporation, *inter alia*, is:

*To insure and keep insured the building to the replacement value thereof against fire, earthquake, hurricane and such other risks as*

*may be prescribed, unless the proprietors by unanimous resolution otherwise determine.*

It is the duty of the corporation to maintain adequate insurance coverage for the building(s) and the proprietors are responsible to pay for the insurance. The payment of insurance premiums often dictates the methodology employed in collecting the sums, whether by the application of a cess or by monthly instalments. Whatever the methodology employed, the proprietor is responsible to pay the amounts in accordance with his unit entitlement. The corporation may also provide for an insurance fund for which monthly instalments are made by each proprietor.

A single proprietor cannot determine that no insurance coverage is to be sought but rather all proprietors (100%) have to agree that no insurance will be obtained.

## MAINTENANCE CONTRIBUTIONS

The amount of maintenance contribution is determined by the budgeted expenses of the corporation. This budget should be passed at an Annual General Meeting (AGM) or an Extraordinary General Meeting.

The proprietor is responsible for making his regular monthly maintenance contributions to the maintenance fund established for the control, management and administration of the common property, for the payment of any premiums of insurance and for the discharge of any of its other obligations (Section 5 (2) (a)).

Please bear in mind that these fees are outgoings to meet current expenses and if one proprietor fails to pay his fraction of the contribution, he puts pressure on the other proprietors to close the gap to allow the corporation to meet its expenses. The corporation may also increase the maintenance fees in order to cover a shortfall by levying additional contributions from proprietors.

## NON-PAYMENT OF MAINTENANCE

*Where for a period exceeding thirty days, a proprietor fails, neglects or refuses to pay to the corporation, all or any part of the contribution levied pursuant to section 5(2)(b), the corporation shall act in the manner specified in subsection (2) (of the Registration (Strata Titles) Act).*

The Act provides the corporation with the right to exercise a power of sale in respect of a strata lot in accordance with the provisions of the Act (Section 5(2) (e)).

Thus the corporation may:

- Initiate the process outlined in the Act to apply for a Power of Sale certificate from the Commission of Strata Corporations. Having received a Power of Sale certificate, the corporation can dispose of the unit by private treaty according to the guidelines established in the Act.
- Apply for dispute resolution and order to the Commission of Strata Corporation to encourage structured maintenance payment of the outstanding amounts.
- Bring a civil action in a court of competent jurisdiction to recover outstanding sums in addition to interest and legal fees.
- Apply to the courts for permission to rent the unit, if the proprietor cannot be located and the unit is vacant.



## BY-LAWS

The Registration (Strata Titles) Act establishes the basic by-laws in the First and Second Schedules. These by-laws are applicable to all strata corporations providing that no by-law has been established or registered with the strata plan. It is the responsibility of the individual proprietor to make themselves aware of the by-laws which apply to their corporation.

### CHANGES TO THE BY-LAWS

The corporation can make changes to the by-laws. The by-laws which govern a corporation may include the by-laws established in the First and Second Schedules. However, the corporation can make amendments to the First Schedule by-laws with a resolution passed by at least 75% of the proprietors. The by-laws established in the Second schedule can be varied by the corporation on a majority vote.

Changes made to the by-laws are effective when the corporation has lodged a notification of the changes (in a prescribed manner) to the Registrar of Titles and there is notification from the Office of Titles that the change has been effected on the strata plan.

## VOTING RIGHTS

The proprietor is entitled to vote at an Annual General Meeting (AGM) or Extra Ordinary General Meeting (EGM) providing all contributions, in respect of his strata lot, have been paid up. However, where the Act requires a unanimous resolution, then all proprietors (100%) are able to vote regardless of payment status.

A proprietor may exercise his right to vote if absent from the meeting by appointment of a proxy. The proxy form must be completed by the proprietor or an attorney. The Stamp Duty Act, Section 23 (1) (2) (3) mandates that all proxy forms must be stamped by purchasing a JA\$100 stamp at any post office and affix it to the proxy form. The adhesive stamp should then be initialled and dated before it is presented at the AGM.

## EXECUTIVE COMMITTEE

The Executive Committee of the corporation is elected at an Annual General Meeting and consists of at least three (3) proprietors (tenants cannot be a part of the Executive Committee unless they are acting under a Power of Attorney) and may have a maximum of nine (9) members. The exception being when there are not more than three proprietors, then the Executive Committee consists of all the proprietors. They have the right to employ agents on behalf of the corporation in exercise of its functions. They are therefore subject to the restrictions imposed upon it by the directives given at a general meeting.

The Executive Committee is also mandated to make the necessary submissions to the Commission of Strata Corporations on behalf of the strata corporation.

## THE DUTIES OF THE EXECUTIVE COMMITTEE

The Executive Committee, in its relationship with the proprietors, also has guidelines on how it should operate. The Executive Committee is empowered to perform certain duties on behalf of the corporation which include:

- To control, manage and administer the common property for the benefit of all proprietors;
- To maintain the common property in a good and serviceable condition;
- Where practicable to establish suitable lawns and gardens;
- To keep the building(s) insured, to effect any other legally required insurance and to pay the premiums;
- To provide the proprietor or mortgagor with the insurance policy;
- To inform proprietors or their agents of any lapse in insurance coverage in a timely and specified manner;
- To comply with any notice or order by any competent public or local authority and enter any strata unit to effect such repairs;

- To comply with any reasonable request for the names and addresses of the Executive Committee;
- To establish a fund for the administrative expenses and determine the level of contribution of each proprietor by unit entitlement;
- To apply interest charges to outstanding arrears; and
- To exercise a power of sale in respect of a strata lot in accordance with the provisions outlined in the Registration (Strata Titles) Act.

The Executive Committee is also charged with the administrative responsibility to:-

- Keep minutes of meetings;
- To keep proper books of accounts;
- Prepare and present proper accounts of all moneys of the corporation at an Annual General Meeting; and
- Facilitate the inspection of the books of account by a proprietor, mortgagee or person duly authorized.

## PROPRIETOR'S RESPONSIBILITY

When an individual chooses to invest in a strata property there are some agreed conditions which govern his ownership.

These include to:-

- 1 Permit the corporation to enter his strata unit for the purpose of inspecting or repairing common area facilities;
- 2 Pay all rates and taxes, etc.;
- 3 Repair and maintain the strata lot;
- 4 Utilize and enjoy the common property in a manner which does not affect the use and enjoyment of other proprietors etc.;
- 5 Notify the corporation of a change in ownership or address;
- 6 Appoint an agent if he is unable to act; and
- 7 Furnish any lessee with a copy of the by-laws governing the strata property.

## DISPUTE RESOLUTION

In exercising its mandate to the strata corporations, the Commission facilitates the resolution of disputes between the corporation and a proprietor and between proprietors. The dispute resolution forum is meant to deal with issues relevant to the Act.

A proprietor or the corporation can make an application to the Commission for Dispute Resolution & Order using the appropriate form which is available on the Commission's website ([www.csc.gov.jm](http://www.csc.gov.jm)). This mechanism seeks to bring the parties to a neutral setting so that the issues can be fully ventilated and an agreement reached by both parties, guided by the dictates of the Act.

## STRATA APPEALS TRIBUNAL

The Strata Appeals Tribunal was established to provide a 'legal' framework to deal with the issues surrounding strata corporations. Section 15A (1) of the Act establishes the Strata Appeals Tribunal for the hearing of appeals from either the corporation or the proprietor regarding a decision of the corporation or the Commission. An order made by the Strata Appeals Tribunal is lodged with the Clerk of the Courts and is treated as if it were an order made by the Resident Magistrate's Court.





## **The Commission of Strata Corporations**

### Registration (Strata Titles) Act Section 3B(1)

The functions of the Commission shall be to:

- a) Monitor, regulate and supervise corporations incorporated by section 4;
- b) Keep or cause to be kept a register of such corporations To be known as “The Register of Strata Corporations”;
- c) Facilitate the resolution of disputes, in particular, those between a corporation and a proprietor arising from any matter to which this Act relates;
- d) Consider complaints from proprietors that the amount of contribution levied under section 5(2)(b), is unreasonable or inequitable;
- e) Enforce the by-laws; and
- f) Perform such other functions as may be conferred up on It by on under this Act or as the Minister may by order prescribe.

### **Commission of Strata Corporations**

Real Estate Board/Commission of Strata  
Corporations  
24 Trafalgar Road, Kingston 10  
Tel: (876) 926-9748/9 Website:  
[www.csc.gov.jm](http://www.csc.gov.jm)