

# BCREA: Education Session

**Wednesday August 23, 2022**

Session: Legal Update on Rentals, Short-Term Accommodations, Human Rights Accommodations, EV Charging

Lisa Mackie, Lawyer, Alexander Holburn LLP

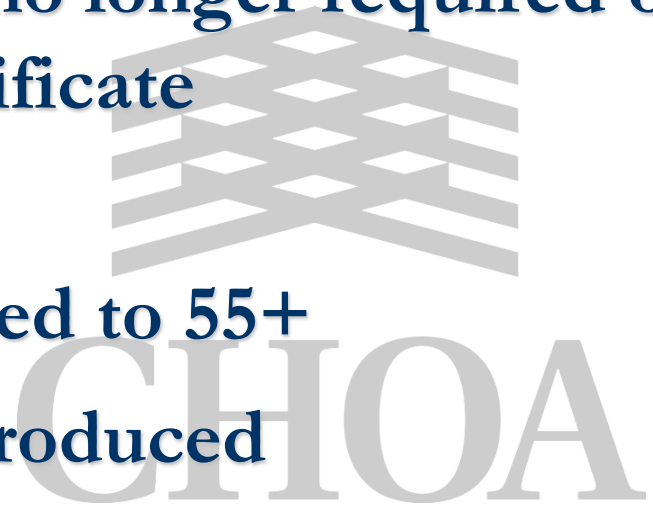
Tony Gioventu, Executive Director, CHOA



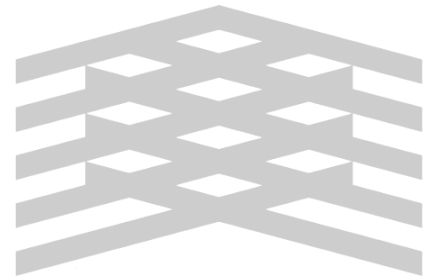
*We gratefully acknowledge our partnership with  
BC Housing and the Building Excellence Research &  
Education Grants Program*

# What happened

- **Rental Bylaws were dissolved**
- **Developer rental disclosure exemptions were dissolved**
- **Short term accommodation bylaws continue**
- **The total rental number is no longer required on a Form B Information Certificate**
- **Form K still required**
- **Age Restrictions were limited to 55+**
- **EV charging legislation introduced**



# Update on Rentals



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# What happened with Bill 44

- **Rental Bylaws were dissolved**
  - This amendment applies to all strata corporations across BC, including Bare Land strata corporations
  - The amendment came into effect on November 24, 2022



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# What does this mean for our rental bylaws?

- **Strata corporations can no longer limit, prohibit or restrict tenancies, or rentals of a strata lot or portion of a strata lot**
- *What happens if a rental bylaw is still registered in the LTO?*
- *Should listings reference rental restrictions if they are registered in the LTO?*



# Is A Form K still required ?

## Landlord to give bylaws, rules and Notice of Tenant's Responsibilities to tenant

**146** (1) Before a landlord rents all or part of a residential strata lot, the landlord must give the prospective tenant

(a) the current bylaws and rules, and

(b) a Notice of Tenant's Responsibilities in the prescribed form.

(2) Within 2 weeks of renting all or part of a residential strata lot, the landlord must give the strata corporation a copy of the notice signed by the tenant.

(3) If a landlord fails to comply with subsection (1) or (2), the tenant

(a) is still bound by the bylaws and rules, but

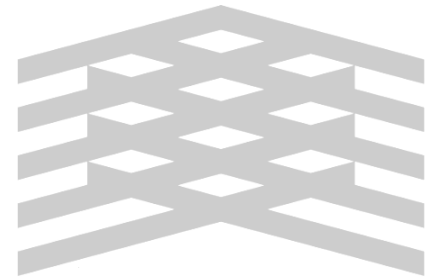
(b) may, within 90 days of learning of the landlord's failure to comply, end the tenancy agreement without penalty by giving notice to the landlord.

(4) If a tenant ends a tenancy agreement under subsection (3), the landlord must pay the tenant's reasonable moving expenses to a maximum of one month's rent.

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# Form K Enforcement

- Should the Form K requirement form part of the bylaws?
- Should the Form K requirement form part of the tenancy agreement?
- **Benefits:**
  - **Enforcement**
  - **Fines for the landlord/owner**
  - **Eviction options**



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# Showing a Rented Property

## Accessing a Rental Property for Open Houses, Showings, and Inspections

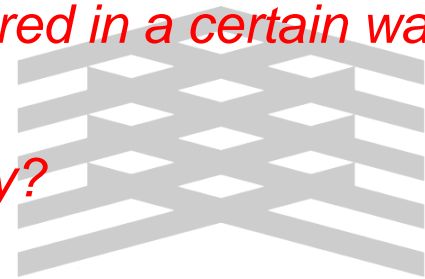
*What conditions must be satisfied to enter the property?*

*Does notice of entry need to be in writing?*

*Does notice of entry need to be delivered in a certain way?*

*How much notice is required?*

*What happens if a tenant refuses entry?*



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# Evicting A Tenant – Owner/Buyer

**1 Month Notice: Conduct related (e.g. interference with listing)**

**2 Month Notice: Purchaser intends to occupy**

*What conditions must be satisfied to evict the tenant?*

*What is the form of eviction notice that must be used?*

*What happens when the tenant disputes the notice?*

*What happens when the tenant simply refuses to leave?*

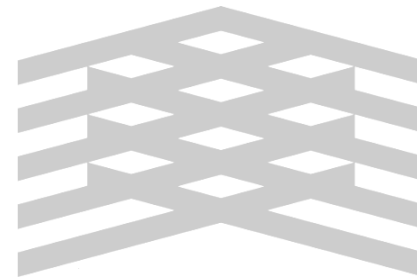
**Landlord notice under the SPA:**

A repeated or continuing contravention of a reasonable and significant bylaw or rule by a tenant of a residential strata lot is an event that allows the landlord to give the tenant a notice terminating the tenancy agreement under section 47 [*landlord's notice: cause*] of the [Residential Tenancy Act](#).

# Evicting A Tenant – Owner/Buyer

## Residential Tenancy Branch

- **Standard Hearing (section 47, RTA)**
  - Expected timelines
  - Evidentiary requirements
- **Expedited Hearing (section 56, RTA)**
  - Expected timelines
  - Evidentiary requirements



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# Evicting A Tenant – Strata Corporation

## Eviction by strata corporation

**138** (1) A repeated or continuing contravention of a reasonable and significant bylaw or rule by a tenant of a residential strata lot that seriously interferes with another person's use and enjoyment of a strata lot, the common property or the common assets is an event that allows the strata corporation to give the tenant a notice terminating the tenancy agreement under section 47 [*landlord's notice: cause*] of the [Residential Tenancy Act](#).

(2) An eviction under subsection (1) does not affect any rights of the landlord under the tenancy agreement.

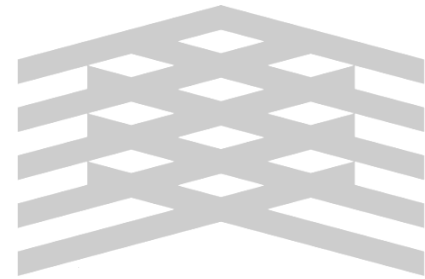
**Enforcement: Residential Tenancy Branch (?) / Supreme Court**



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- *What happened in Dallas?*

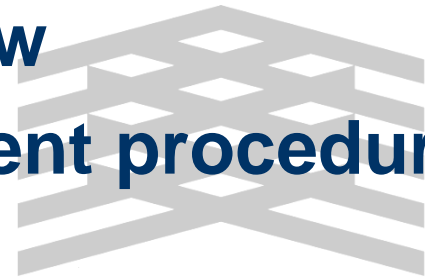
## Update on Short-term Accommodations



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# Are short term accommodation bylaws affected? (e.g. AirBNB)

- **Bylaws that prohibit short term accommodations are still enforceable**
- **The maximum fine that may be imposed is \$1,000 per day for the violation of short term accommodation bylaw**
- **Standard Bylaw enforcement procedures under section 135 apply**



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# The Long and Short of it.....

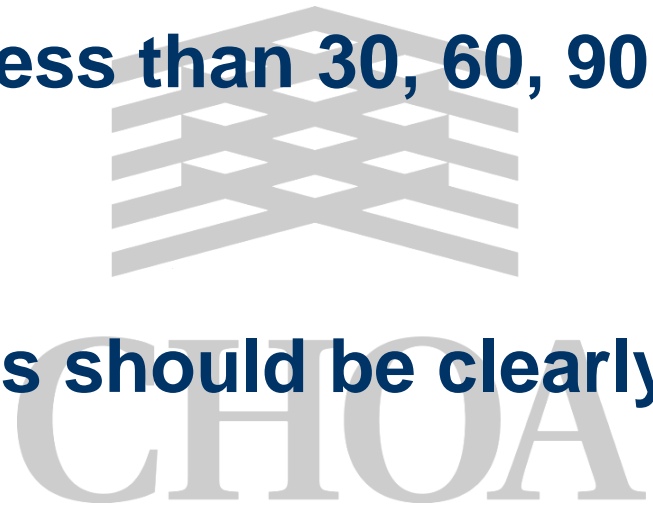
- Only reference to short term accommodation bylaws found in the maximum fine provisions of the Regulations (section 7.1)
- “a bylaw that prohibits or limits the use of all or part of a residential strata lot for remuneration as vacation, travel or temporary accommodation”
- Note: “short” isn’t referenced in definition



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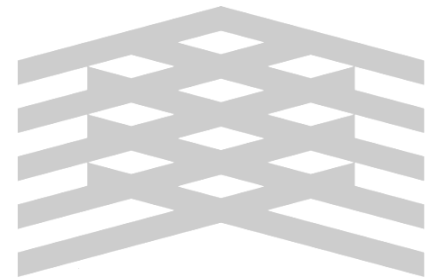
# The Long and Short of it.....

- **The period of time of a short term accommodation should be identified in the bylaw to differentiate from a rental restriction**
- **What is reasonable ? Less than 30, 60, 90 days ?**
- **Prohibited property uses should be clearly flagged to the client**



*a new term we need to know and understand, “specified resident”*

## Update on Age Restrictions



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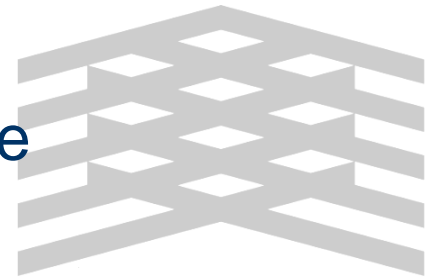
# Age Restrictions

Bylaws that apply to the age of occupants is restricted to 55 +

Bylaws that set an age restriction less than 55 are not enforceable

Existing 55+ continue to be enforceable

The bylaw, applies to all occupants (tenants, owners, occupants), but .....



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# Age Restrictions

## Age restriction bylaws

**123.1** (1) **Except as permitted by subsection (2)**, a bylaw must not restrict the age of persons who may reside in a strata lot.

(2) The strata corporation may pass a bylaw that requires one or more persons residing in a strata lot to have reached a specified age that is not less than 55 years.



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# Age Restrictions

## Limits to age restriction bylaws

**123.2** A requirement in a bylaw for one or more persons residing in a strata lot to have reached a specified age **does not** apply to any of the following persons:

(a) a person who meets all of the following criteria:

(i) immediately before the bylaw was passed,

(A) the person **resided** in the strata lot, and

(B) by residing in the strata lot, the person was not contravening any bylaw restricting the age of persons who may reside in the strata lot;

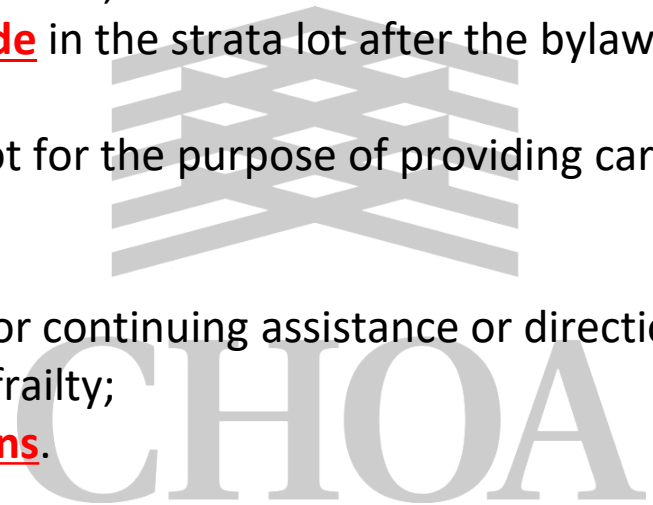
(ii) the person continues to **reside** in the strata lot after the bylaw is passed;

(b) a **caregiver** who resides in the strata lot for the purpose of providing care to another person who

(i) resides in the strata lot, and

(ii) is dependent on caregivers for continuing assistance or direction because of disability, illness or frailty;

(c) a person in a **prescribed class of persons**.



# Age Bylaws and Exemptions Regulation

## Age restriction bylaw exemptions

**7.01** (1) In this section:

**"child"** means a person under the age of 19 years;

**"specified resident"**, in relation to a bylaw referred to in [section 123.1 \(2\)](#) of the Act, means a resident of a strata lot who

(a) has reached the age specified in the bylaw, or

(b) is a person referred to in [section 123.2 \(a\)](#) of the Act to whom a requirement in the bylaw to have reached a specified age does not apply;

**"spouse"** means a person who

(a) is married to another person, or

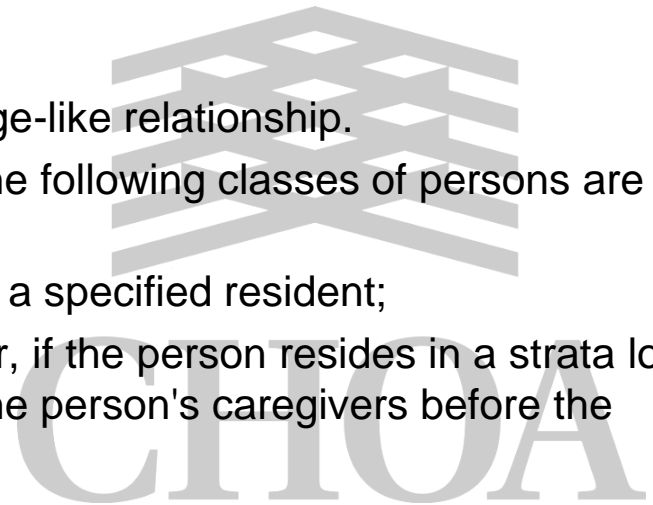
(b) is living with another person in a marriage-like relationship.

(2) For the purposes of section 123.2 (c) of the Act, the following classes of persons are prescribed:

(a) a child, if one of the child's caregivers is a specified resident;

(b) a person who is 19 years of age or older, if the person resides in a strata lot with a specified resident who was one of the person's caregivers before the person reached the age of 19 years;

(c) the spouse of a specified resident.



# Age Bylaws and Exemptions Regulation

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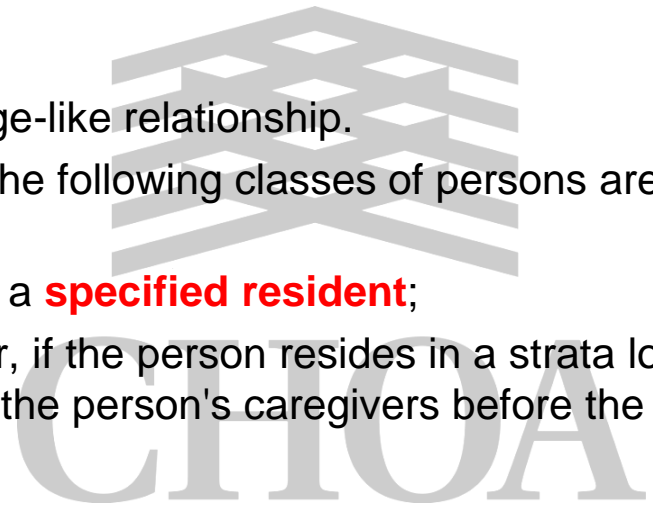
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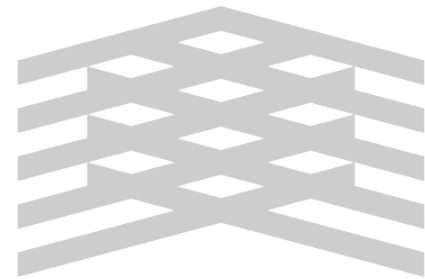
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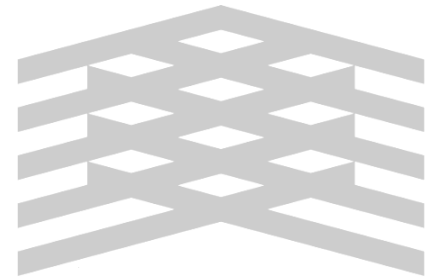
# Age Bylaws and Exemptions

- ***BC Human Rights Code***
  - Family status
  - Accommodation,
  - the intent to Accommodate
  - Undue Hardship



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# Housing Accessibility



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# Accessibility: fundamentals

“ the goal of human rights legislation is transformative. It is intended to foster an equitable society.... Likewise accommodation is the process of fine tuning society so that its structures and assumptions do not result in the relegation and banishment of disabled persons from participation, which results in discrimination against them.”

*HRT decision Biggings v Pink, access to a rental unit*



# Accessibility: fundamentals

Strata corporations are subject to the provisions of the Strata Property Act Section 121, a bylaw is not enforceable to the extent that it contravenes the Human Rights Code (HRC) , with the exception of age restrictions.

The HRC applies to bylaws and rules.

# Accessibility: fundamentals

*If there is a conflict between the HRC and any other law, the HRC prevails*

***Discrimination in breach of the HRC does not require an intention to discriminate***

*The previous provision under the Strata Property Act that exempted the HRC from age restriction bylaws was repealed in November of 2022*

# Protected Grounds

*Indigenous identity*

*Colour*

*Place of origin*

*Marital status*

*Physical disability*

*Sexual orientation*

*Gender identity*

*Gender expression*

*Race*

*Ancestry*

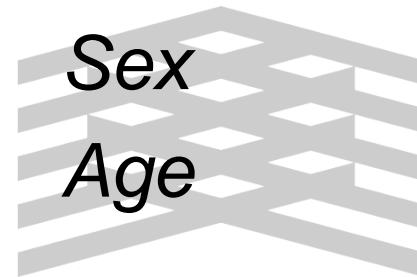
*Religion*

*Family status,*

*Mental disability*

*Sex*

*Age*



# Key Sections of the HRC

- *Section 8: Discrimination in accommodation, service and facility*
- ***Section 9: Discrimination in purchase of property***
- *Section 10: Discrimination in tenancy premises*



# Key Sections of the HRC

## Discrimination in purchase of property

**9** A person must not

(a) deny to a person or class of persons the opportunity to purchase a commercial unit or dwelling unit that is in any way represented as being available for sale,

(b) deny to a person or class of persons the opportunity to acquire land or an interest in land, or

(c) discriminate against a person or class of persons regarding a term or condition of the purchase or other acquisition of a commercial unit, dwelling unit, land or interest in land

because of the Indigenous identity, race, colour, ancestry, place of origin, religion, marital status, physical or mental disability, sex, sexual orientation, or gender identity or expression of that person or class of persons.

**Note: age and family status are not protected by section 9**

# Warning!

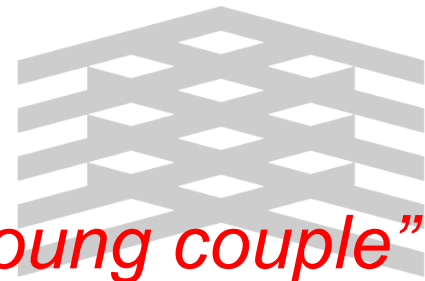
*Be very cautious that your listing does not unintentionally alienate or discourage certain persons from purchasing, renting or living in a property:*

*“his and hers sinks”*

*“ideal for professional couple”*

*“a classic starter home for a young couple”*

*“walking distance to....”*



# What does discrimination look like?

*The long held view of many strata communities is that a decision or bylaw that applies to all owners equally is not discriminatory.*

- Equal treatment can cause adverse effects*
- Same treatment does not mean equal treatment*
- A neutral bylaw can still be discriminatory*

***Konieczna v SP NW 2489***

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# What does discrimination look like?

*Look closely.....*

- Strata bylaw required wall to wall carpeting with underlay in all suites
- Strata bylaw prohibits pets of any kind
- Strata bylaw requires front doors to be the same colour
- Strata bylaw permits smoking on balconies
- Strata bylaw prohibits air conditioners
- Strata bylaw bans holiday lights
- Strata bylaw bans incense





# Accommodation Limits

## “Undue Hardship”

**Impossibility**: it is impossible to accommodate individuals sharing the characteristics of the resident without imposing undue hardship upon the strata corporation or property management company;

**Serious risk**: the resident cannot be accommodated for safety/security/building code reasons;

**Excessive cost**: the strata corporation and/or property management company lacks the financial resources to accommodate the resident.



# Common Requests

## Access

- Entry/facility ramps
- Powered stair lifts
- Electronic door openers for common entries
- Levered Door Handles
- Swimming pool ramps or lifts
- 24 hour entry access
- Stairwell Handrails

## Accommodation

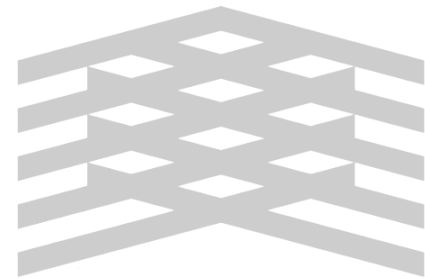
- Air conditioners
- Air filtration systems
- Alterations to suites for entry access, mobility within spaces or to accommodate medical conditions
- Pets that are contrary to the bylaws
- Live-in caregivers with age bylaws

# The Accommodation Process

***Leary v. Strata Plan VR 1001*, [2016 BCHRT 139](#)** has become the benchmark for strata corporations in navigating the human rights accommodation process.

Although the decision pertains to smoking, the test to assess the accommodation process applies.

# Update on EV Charging



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## Bill 22 Changes

- **Bill 22 introduces the transitional requirement for strata corporations to enable EV installations or electrification requirements for strata corporations**
- **Strata corporations can no longer unreasonably refuse the installation of EV**
- **Strata corporations may require all conditions of cost and operations are met by the applicants as a condition of granting permission to install and operate a charging station.**
- **Extensive regulations to address capacity and management are anticipated in 23/24**

The logo for the Canadian Home Owners' Association (CHOA) is located in the bottom right corner. It features a stylized graphic of a house with a gabled roof, composed of several horizontal lines. Below the graphic, the letters "CHOA" are written in a large, bold, serif font.

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# Changes to Strata Property Act

Changes to the *Strata Property Act* encourage strata corporations to embrace electric vehicle use by doing the following:

- changing the voting threshold to approve and pay for EV charging infrastructure installations;
- increasing the amount of time that an owner may have exclusive use of a common property parking stall;
- and preventing a strata corporation from unreasonably refusing approval to install EV charging infrastructure.

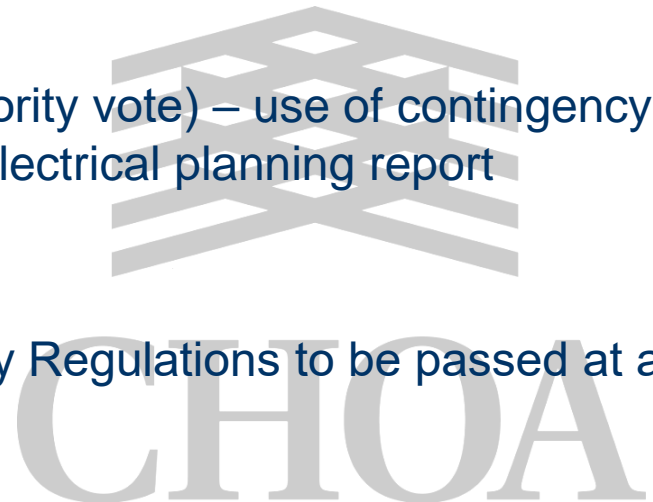


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# New Voting Thresholds

The following became effective on May 11, 2023, regarding EV charging infrastructure:

- Change threshold (3/4 vote changed to a majority vote) - significant change in use or appearance of common property (section 71);
- Change threshold (3/4 vote changed to a majority vote) - approve acquisition of personal property (section 82);
- Change threshold (3/4 vote changed to a majority vote) – use of contingency reserve fund for EV charging infrastructure or electrical planning report (section 96)
- The rest of the provisions will be addressed by Regulations to be passed at a later date



# When Regulations Pass.....

- A period (greater than one year) that the council may permit common property to be exclusively used;
- Requirements to be fulfilled by an owner when making a request;
- The class of EV charging infrastructure for which an owner may make a request;
- Criteria for approval of a request;
- Setting out the period by which a strata corporation must approve a request;
- Define a person who is qualified to prepare an electrical planning report

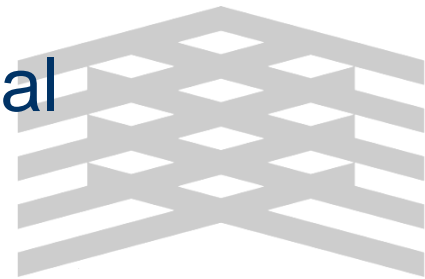


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## Before you list a property/represent a buyer

- Identify the type of strata corporation:
  - Bare land / bare land attached
  - Townhouse attached/detached
  - Apartment/High Rise
  - Air Space Parcel
  - Leasehold Municipal/Regional
  - Leasehold Indigenous



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## Where do we find this information?

- Identify the type of strata corporation:
  - Retrieve and Print a copy of the registered strata plan form the Land Title Registry
  - Do not rely upon owner developer documents or disclosure as they are subject to change as a result of zoning or surveys prior to filing
  - The common and general indices will include the Air Space Parcel and Lease Hold Agreements



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# Thank you



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1.877.353.2462  
[www.choa.bc.ca](http://www.choa.bc.ca) to sign up for the eUpdate



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Real Estate Association



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