

## WHEN DOES A STRATA SUBDIVISION NEED LOCAL GOVERNMENT OR APPROVING OFFICER APPROVAL?

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Most strata plans<sup>1</sup> are prepared and filed around the time construction of a building is complete. For new builds with conventional strata plans, local government or approving officer approval may not be required. However, for developers and builders hoping to avoid hiccups when completing their development or project where they involve stratification, they should be aware of certain scenarios where approval of a local government or an approving officer is required before depositing the strata plan. Understanding when these scenarios may arise can help mitigate the possibility of delays in completing a development or project involving a stratification by knowing whether a local government may, for example, require the property owner to meet other requirements in connection with strata plan approval.

This article briefly details the most common scenarios requiring local government or approving officer approval, being: (1) where there is a charge on title to the property in favour of a local government, (2) if the stratification involves a building that is previously occupied, (3) if the stratification involves a bare land strata plan, and (4) if the stratification involves a phased strata plan.

### Charges in Favour of a Local Government

Section 244(1)(g)(ii) of the *SPA* requires a strata plan<sup>2</sup> to be signed by “each holder of a registered charge on all or part of the land included in the strata plan”. However, the chargeholder’s signature is not required if, “in the registrar’s opinion, the interests of persons who have not signed are not adversely affected by the deposit of the plan.” This means that if a local government holds, for example, a statutory right of way or covenant over the property being stratified or a portion of that property, that local government may need to sign the Application to Deposit Plan form. The safest approach to avoid a filing defect related to signatures to a strata plan would, however, be to obtain the local government’s signature.

The Land Title Practice Manual notes that the registrar’s discretion to dispense with signatures is “similar to the registrar’s discretion under Section 97 of the *Land Title Act*”. This suggests that the same exceptions for signatures on a subdivision plan may apply to strata plans as well.

*(Continued on page 2)*

## Previously Occupied Buildings

Section 242 [*Approval for conversion of previously occupied buildings*] of the *SPA* provides that a person depositing a strata plan that includes a previously occupied building (as defined in Section 14.1 of the *Strata Property Regulation*<sup>3</sup>) must submit the strata plan to the “approving authority”. The approving authority depends on the location of the property—for land located in a municipality, the approving authority is that municipality’s council, whereas for land located in a regional district, the approving authority is that district’s board. However, an approving authority may delegate its decision-making authority to an approving officer or other individual.<sup>4</sup>

The approving authority can approve, refuse or require conditions to be met in order to approve the strata plan. Additionally, the approving authority is prohibited from approving a strata plan unless the building “substantially complies with... (a) the applicable bylaws of the municipality or regional district;... [and] (c) the building regulations within the meaning of the *Building Act*...” This includes compliance with zoning bylaws.<sup>5</sup>

In making its decision, the approving authority must consider “(a) the priority of rental accommodation over privately owned housing in the area, (b) any proposals for the relocation of persons occupying a residential building, (c) the life expectancy of the building, (d) projected major increases in maintenance costs due to the condition of the building, and (e) any other matters that, in its opinion, are relevant.”<sup>6</sup> While the intent of requiring approving authority approval is, in part, to protect rental stock, the overall intent is broader, since the approving authority may consider any matter that it considers relevant.<sup>7</sup>

## Phased Strata Plan

Strata plans may be deposited in successive phases.<sup>8</sup> Where this approach is taken, when stratifying property, Sections 221(1)(b) and 224 [*Approval of phase*] of the *SPA* provide that an owner developer depositing a phase of a phased strata plan must obtain approving officer approval for that phase before depositing the strata plan.

In connection with filing the strata plan for the first phase, the approving officer must also approve a Phased Strata Plan Declaration, being a Form P,<sup>9</sup> which sets out the phasing plan for the property.<sup>10</sup> Additionally, the approving officer must approve a phase if it “substantially complies with the requirements for that phase as set out in the Phased Strata Plan Declaration”.<sup>11</sup>

Where there are common facilities (as defined in Section 217 of the *SPA*), there are additional approving officer approval requirements.<sup>12</sup> The *SPA* also requires the owner developer to, in certain cases, provide security for those common facilities<sup>13</sup> in order to obtain approving officer approval unless the common facility is at least 50% complete.<sup>14</sup>

## Bare Land Strata Plan

Section 243 [*Approval of bare land strata plan*] of the *SPA* provides that a person depositing a bare land strata plan must obtain approving officer approval for that strata plan.

The *Bare Land Strata Regulations*<sup>15</sup> (the “*BLSR*”) sets out requirements that must be met for approving officer approval together with items an approving officer may consider when reviewing

*(Continued on page 3)*

an application for strata plan approval. For example, under Section 2(1)(a) of the *BLSR*, approval can only be given if the strata plan “conforms to the relevant municipal or regional district zoning bylaws and development permits.” Additionally, under Section 3(1)(e) of the *BLSR*, the approving officer must consider various items such as the plan’s effect on nearby amenities, whether the deposit is against public interest, whether there is sufficient highway access and maintenance thereof, drainage issues, and geotechnical and environmental issues. The *BLSR* contain other requirements as well, ranging from access<sup>16</sup> and off-site<sup>17</sup> and on-site services,<sup>18</sup> to vehicle parking.<sup>19</sup> Note that *BLSR* is considered a “self-contained code for strata plan subdivisions” such that “an owner need not look further”.<sup>20</sup>

## Conclusion

While the default position is that local government or approving officer approval is not required when depositing a strata plan in the Land Title Office to stratify property, there are several scenarios where such approval becomes necessary: when the local government is a chargeholder of a charge adversely affected by the plan, when the building being stratified is previously occupied, when the plan is a phased strata plan, and when the plan is a bare land strata plan.

Given that seeking local government and/or approving officer approval can result in conditions being imposed prior to approval, those intending to stratify their property should make themselves aware of whether such approval could be required as early as possible to ensure that any potential delays in filing (due to, for example, needing to address

servicing or access requirements) are adequately accounted for. In many cases, local governments may already have a procedure in place to handle stratification-related approvals.

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Kai Hsieh

- 1 Being a strata plan referred to in the *Strata Property Act*, SBC 1998, c 43 [SPA].
- 2 This refers to the Application to Deposit Plan form deposited in the Land Title Office together with the strata plan.
- 3 BC Reg 43/2000.
- 4 See *SPA*, *supra* note 1, s 242(10).
- 5 See e.g., *Burton v Harris*, 2003 BCSC 523 (CanLII).
- 6 See *ibid*, s 242(6).
- 7 See *Rockwhite Holdings Limited v O'Shea*, 1995 CanLII 1242 (BC SC).
- 8 See *SPA*, *supra* note 1, s 1(1) “phased strata plan”.
- 9 See *ibid*, ss 221(1)(a), 222(1).
- 10 See *Strata Property Regulation*, *supra* note 3.
- 11 See *SPA*, *supra* note 1, s 224(2).
- 12 See *ibid*, s 225(1).
- 13 See *ibid*, s 223.
- 14 See *ibid*, s 225(2).
- 15 BC Reg 75/78.
- 16 See *ibid*, ss 8-11.
- 17 See *ibid*, s 12.
- 18 See *ibid*, ss 13-16.
- 19 See *ibid*, s 17.
- 20 *ARA Holdings Ltd. v. British Columbia (Provincial Approving Officer)*, 2001 BCCA 397 at para 26.



**KAI HSIEH**


**604.358.7014**

[KAI@CIVICLEGAL.CA](mailto:kai@civiclegal.ca)

Kai is an associate lawyer of the firm and maintains a general municipal law practice with a focus on real estate development. In particular, he regularly drafts section 219 covenants, statutory rights of ways and other legal agreements for real estate projects, and he has provided assistance during various stages of the development process, from rezoning and development permit issuance to air space parcel subdivision and occupancy permit issuance. He has also assisted with other local government matters, ranging from procurement to regulatory issues.

Kai obtained his Juris Doctor from the Peter A. Allard School of Law at The University of British Columbia, articulated with a provincial organization, and was called to the Bar of British Columbia in May 2022. Prior to law school, Kai obtained his Bachelor of Applied Science in Mechanical Engineering with Distinction from UBC. Upon graduating, he was employed as a Process Improvement Specialist at an architectural glass fabrication company for several years, where he designed and implemented a new laminated glass line as well as numerous mechanical and organizational process improvements.

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700 - 900 West Hastings Street, Vancouver, BC V6C 1E5  
604.639.3639 | [www.civiclegal.ca](http://www.civiclegal.ca) |  Civic Legal LLP