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Guide 27: Court Actions

Disclaimer: the guides are periodically reviewed and updated by the Office of Housing and Construction Standards as per the date in the footer below.

The guides are provided for the reader's convenience; they are not a substitute for professional advice including legal advice. Please note: the Standard Bylaws can be amended.

1. **Parties to a Law Suit**

The strata corporation:

- may be sued as a representative of the owners with respect to matters relating to:
  - common property;
  - common assets;
  - bylaws or rules;
  - an act or omission of the strata corporation.
- may be sued by a strata lot owner.

The strata corporation:

- may sue as a representative of all strata lot owners;
- may sue on behalf of one or more owners about matters affecting only their strata lots;
- may sue an owner.

2. **Orders of the Supreme Court**

An owner or tenant may apply to the Supreme Court for an order preventing or remedying a significantly unfair:

- action or threatened action of the strata corporation or strata council;
- decision of the strata corporation or strata council;
- exercise of voting rights by a person who holds 50% or more of the votes, including proxies at a general meeting.

An owner, tenant, mortgagee of a strata lot or interested party can apply to the Supreme Court for:

- an order that the strata corporation perform its duty under the Act, Regulations, bylaws or rules;
- an order that the strata corporation stop contravening the Act, Regulations, bylaws or rules.

The strata corporation, on behalf of all owners except those being sued may bring an action relating to the following matters:

- the interpretation or application of the Act, Regulations, bylaws or rules;
- the common property or common assets;
- the use or enjoyment of a strata lot;
- money owing, including fines.

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The strata corporation may apply to the Supreme Court for an order that an owner, tenant or other person:

- perform a duty he or she is required to perform under the Act, Regulations, bylaws or rules;
- stop contravening the Act, Regulations, bylaws or rules.

3. **Serving Notice of a Suit on the Strata Corporation**

Service on the strata corporation of any court proceeding may only occur by:

- personally serving a strata council member; or
- sending the notice by registered mail to the strata corporation at its most recent mailing address on file in the Land Title Office.

4. **Authorization from Strata Lot Owners for a Law Suit**

Before a strata corporation can begin a lawsuit in the name of all of the strata lot owners, (except the strata lot owner who is being sued) the suit must be authorized by a resolution approved by a ¾ vote. For the purpose of this vote a person being sued is not an eligible voter.

A strata corporation is not required to obtain approval of the strata lot owners before proceeding in Small Claims Court if:

- the proceeding is against an owner or other person to collect money owing to the strata corporation including fines; and
- a bylaw has been passed which dispenses with the need for authorization, and the terms and conditions of bylaw have been met.

A strata corporation can begin a lawsuit on behalf of one or more owners about matters affecting only their strata lots if:

- it obtains the written consent of those owners; and
- the arbitration is authorized by a resolution passed by a ¾ vote.

5. **Costs of the Law Suit**

If the law suit proceeded in the name of all strata lot owners:

- all strata lot owners (except the strata lot owner who is being sued) must contribute to the expense of the suit;
- the strata lot owners must contribute to the expense according to their unit entitlement:
    - unless another method of contributing to the common expenses has been unanimously agreed to;
    - except that the unit entitlement of the strata lot owned by the strata lot owner who is a party to the suit should not be used in the calculation.

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If the lawsuit proceeded in the name of only some of the strata lot owners:

- only those strata lot owners on whose behalf the suit proceeds must contribute to the expense of the arbitration;
- the owners should contribute to the expenses, based on their unit entitlement:
  - unless another method of contributing to the common expenses has been unanimously agreed to;
  - using only the unit entitlement of the strata lots owned by the strata lot owners in whose name the arbitration proceeded.

6. **Judgments Against the Strata Corporation**

All strata lot owners are responsible for a judgment against the strata corporation and must pay the judgment according to their unit entitlement (unless another method of contributing to the common expenses has been unanimously agreed to).

7. **Limits on a Strata Lot Owner involved in a Law Suit with the Strata Corporation**

A strata lot owner who is sued by, is joined in a law suit or has sued the strata corporation:

- is not liable to contribute to the legal costs that the strata corporation must pay;
- does not have a right to information or documents relating to the suit including legal opinions;
- does not have a right to attend those portions of any general or council meeting at which the suit is discussed;
- is not required to contribute to the funds paid to the strata lot owner by the strata corporation in settlement of the matter.

8. **Provincial Court (Small Claims Court)**

Generally, court actions relating to the interpretation of the Act, and the duties and obligations of various parties in a strata development cannot be brought in Provincial Court. However, the strata corporation may sue an owner or tenant, and may file an arbitrator's decision and order for costs in Provincial Court if:

- the amount claimed or the value of the personal property or services is within the monetary jurisdiction of the court ($25,000); and
- the action or decision is in respect of:
  - debt or damages;
  - recovery of personal property;
  - specific performance of an agreement relating to personal property or services;
  - relief from opposing claims to personal property.

References:

Sections of the Act: 163-173

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