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**McCarthy Tétrault's
ANNOTATED BRITISH COLUMBIA
STRATA PROPERTY ACT**

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Release No. 20, August 2018

What's New in this Update:

This release features significant additions to the case law and commentary.

The following sections of the *Strata Property Act* were updated in accordance with amendments: ss. 61, 63, 35, 189.6.

Several new sections of commentary were added under various sections of the SPA including:

- Section 29: Membership on Council
- Section 35: Strata Corporation Records

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- Sections 47: Failure to Give Proper Notice of Meeting
- Section 116: Amount to be Stated in Certificate of Lien
- Sections 118: Extent of Recoverable Legal Costs
- Section 163: Procedural Matters
- Sections 246: Jurisdiction to Amend Unit Title

Highlights

- **Part 1 — Definitions and Interpretations — s. 1(1) — Definitions and interpretations — “residential strata lot”** — In determining whether a strata lot qualifies as a “residential strata lot”, the appropriate approach is to assess the design and intention, as evidenced by the relevant documents and filings, at and around the time of the inception of the development, and not to consider the actual use of the strata lot over an extended period of time (an approach that would fail to give meaning to the words “designed or intended” and would, inappropriately, require reliance on the changing subjective intentions of strata lot owners): *East Barriere Resort Ltd. v. Strata Plan* (2017), 99 B.C.L.R. (5th) 44, 2017 CarswellBC 1254, 279 A.C.W.S. (3d) 202, 2017 BCCA 183 (B.C. C.A.), reversing 2016 CarswellBC 2401, 270 A.C.W.S. (3d) 212, 2016 BCSC 1609 (B.C. S.C.).
- **Part 7 — Section 119 — Nature of bylaws** — In *Kono v. Strata Plan LMS 2685 and another*, 2017 CarswellBC 1978, 2017 BCHRT 143 (B.C. Human Rights Trib.), application for judicial review refused *Kono v. The Owners, Strata Plan LMS 2685 (Millars Ridge)*, 2018 CarswellBC 1651, 2018 BCSC 1045 (B.C. S.C.), the Tribunal dismissed a complaint against an owner who, while performing work as a paid employee of the strata corporation, made a racial comment to the Japanese complainant. The comment arose out of the personal animosity between the owner and the complainant and was not made in the context of a protected sphere of activity under the *Code*.
- **Part 10 — Section 181 — Legal proceedings and Dispute Resolution — Arbitration** — In *Hunt v. Strata Plan LMS 2556*, 2017 CarswellBC 1241, 279 A.C.W.S. (3d) 239, 2017 BCSC 786 (B.C. S.C.), reversed *Hunt v. The Owners, Strata Plan LMS 2556*, 2018 CarswellBC 1349, 292 A.C.W.S. (3d) 698, 2018 BCCA 159 (B.C. C.A.), the petitioners sought judicial review of an arbitral award and an award of special costs. The petitioners had opposed the installation of an HVAC unit in another owner’s strata lot. Even though the strata corporation had

not approved the installation and the HVAC unit was never installed, the petitioners sought to arbitrate the issue. They were unsuccessful and special costs were awarded against them due to their poor conduct (an application for leave to appeal the costs awarded was denied: see *Hunt v. Strata Plan LMS 2556*, 2015 CarswellBC 3765, 262 A.C.W.S. (3d) 522, 2015 BCSC 2412 (B.C. S.C.)). The petitioners applied for judicial review on the basis that the arbitrator had not complied with s. 181 of the SPA and that there was a reasonable apprehension of bias, as the arbitrators had discussed mediation with the strata corporation's counsel but did not advise the petitioners of those communications or the option to mediate. The court held that no prejudice arose to the petitioners despite the arbitrators' failure to advise the petitioners of the possibility of a mediated settlement, as the petitioners were not open to compromise in any event.

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