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Return this exam question paper to your invigilator at the end of the exam before you leave the classroom.

THIS EXAMINATION CONSISTS OF 6 PAGES (INCLUDING THIS PAGE)  
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THE UNIVERSITY OF BRITISH COLUMBIA  
PETER A. ALLARD SCHOOL OF LAW

EXAMINATION – APRIL 2019

LAW 442 – Condominium Law  
Professor DC Harris

TOTAL MARKS: 100  
TIME ALLOWED: 1.5 HOURS

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1. This examination consists of 2 (two) questions. Answer BOTH questions.
2. This is an open-book examination. You are allowed to bring any written material, including your notes, the *Strata Property Act*, and published material into the exam. You may not use any electronic material other than your laptop or notebook computer with ExamSoft Exemplify software.
3. Students writing by hand:
  - a. write legibly on every second line of your exam booklet and on one side of the page;
  - b. use your exam code and not your name;
  - c. if you use more than one booklet, indicate the number of each booklet and the total number of booklets, i.e., 1 of 2, 2 of 2; and
  - d. at the end of the exam, please return all exam booklets, including blank ones.
4. Students using ExamSoft on a notebook computer:
  - a. enter your exam code in the appropriate place; and
  - b. do not include your name or other identifying information in the exam.
5. Put your exam code on the question paper and return the question paper at the end of the exam.
6. Do not begin your exam until you are instructed to do so.
7. **Good luck!**

**QUESTION 1.** 25 marks (23 minutes)

What is the principal piece of legal advice that you would give to a client who is contemplating the purchase of a fee simple interest in a residential strata lot? Explain why you think the advice is important.

**QUESTION 2.** 75 marks (67 minutes)

The president of a strata council has telephoned you for advice about a number of different matters at her strata corporation in Vancouver. You have the strata plan and see that the owner-developer deposited it at the Land Title Office in 1987. It shows a 10-storey building divided into 50 strata lots and common property. The plan indicates that the ground floor, which includes the entrance way, several utility rooms, a “party room”, and a fitness room, is common property. The two levels of underground parking are also marked as common property. All the strata lots have balconies, and each of the balconies is marked as the limited common property of the adjacent strata lot. You also have copies of the strata bylaws, the relevant sections of which are included below.

You have taken the following notes on the different issues about which the president is seeking your advice.

The first issue involves parking. There is currently no assigned parking. Apart from three parking stalls that have bicycle racks, the residents can park where ever they can find an empty parking stall. However, several owners have purchased electric vehicles and they have requested that the strata corporation install charging stations and assign to them the adjacent stalls. The owners of the electric vehicles have offered to pay for the installation of the charging stations at particular parking stalls if the strata corporation designates those parking stalls as the limited common property of their strata lots. The strata council is considering this request and is also contemplating whether to move to a system of assigned parking stalls for the other residents, although without designating the stalls as limited common property of particular strata lots. The strata council president is uncertain if these changes are desirable, but seeks advice on if they are possible and, if so, how to proceed.

The second issue involves a strata lot owner who is using his apartment for short-term accommodation. Responding to numerous complaints from his neighbours in the building about the frequent churn of people moving in and out of his strata lot, the strata council sent the owner a letter indicating that he was in violation of bylaw 3(2) and that he must stop using his apartment for short-term accommodation. He responded that he had a business licence under Vancouver’s short-term rental accommodation bylaw, which allows a principal residence to be used for short-term accommodation, and he continued to rent out his apartment through Airbnb. The strata council then determined that the owner was in contravention of bylaw 3(2) and the strata corporation levied fines against the owner of \$50/week. The owner paid these fines for several months, but continued to rent out his apartment on Airbnb. He is now refusing

to pay the fines and has also initiated a claim in the Civil Resolution Tribunal for an order that the strata corporation stop fining him and that it return the fines he has paid on the grounds that the bylaws do not prohibit renting out his unit as a private dwelling on a short-term basis. According to the strata council president, most owners in the building are strongly opposed to short-term rentals and wish to contest this claim. They also wish to make it clear to any other owner considering short-term rentals that this activity is prohibited. How should the strata corporation proceed?

The third issue involves a young couple who are expecting a baby at any time. Several years ago, they purchased a strata lot in the building. Shortly after learning that they were expecting a child, the couple sought an amendment to bylaw 3(3). They proposed that the strata corporation amend bylaw 3(3) as follows: "A strata lot must have not more than one resident under the age of 19." Although a majority of owners supported the amendment, the motion fell several votes short of the required threshold to change a bylaw. Next, the couple applied to the strata council for a lease permit so that they could lease their apartment if they had to move out, but the strata council denied the permit on the grounds that the maximum number of strata lots (10) were already under lease and there was no basis for granting an exemption. However, the couple is adamant that the current age restriction bylaw is discriminatory, and therefore unenforceable, but that if it is enforceable, then they should receive a permit under the "hardship or extenuating circumstances" exception in the bylaws. If they can't live in the strata lot, then they can't afford to keep it without leasing it, and they don't want to sell the strata lot because the market has dipped considerably since they purchased it and to be forced to sell now would cause them a significant loss. Is the bylaw enforceable, and if so, is the strata corporation obliged to grant the request for a lease permit?

The final issue involves a water leak. Water has infiltrated the building on its east side, and it appears, after a preliminary inspection, that the water entered through several of the lower east side balconies. The strata council president and the rest of the strata council are convinced that the water got into the building because several owners did not take the simple step of cleaning their balcony drains of leaves and other debris. The owners believe the problem is at the connection between the balcony and the exterior wall and that this is for the strata corporation to repair. When the strata council put a motion to the strata corporation to hire an engineering firm to do a thorough inspection, the owners on the other sides of the building, whose units are not affected by the water damage, voted as block against the motion and it failed. Because of this impasse, nothing has happened. And whatever the cause of the problem, there is an owner underneath the leaking balconies who fears to use her balcony because she is concerned that the water damage has weakened its structural integrity. She has launched a claim against the strata corporation in the Civil Resolution Tribunal, seeking an order for repairs to her balcony so that she can use it again. The strata council president wants some clear advice about the obligations of the strata corporation in this situation.

Write a memo to file that outlines the legal advice you would provide for each issue.

## **Strata Corporation Bylaws**

### **Division 1 – Duties of Owners, Tenants, Occupants and Visitors**

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#### **Repair and maintenance of property by owner**

**2** (1) An owner must repair and maintain the owner's strata lot, except for repair and maintenance that is the responsibility of the strata corporation under these bylaws.

(2) An owner who has the use of limited common property must repair and maintain it, except for repair and maintenance that is the responsibility of the strata corporation under these bylaws.

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#### **Use of property**

**3** (1) An owner, tenant, occupant or visitor must not use a strata lot, the common property or common assets in a way that

- (a) causes a nuisance or hazard to another person,
- (b) causes unreasonable noise,
- (c) unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets or another strata lot,
- (d) is illegal, or
- (e) is contrary to a purpose for which the strata lot or common property is intended as shown expressly or by necessary implication on or by the strata plan.

(2) A strata lot shall not be used for any purpose other than a private dwelling.

(3) No person under the age of 19 shall reside in a strata lot.

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#### **Renting or leasing of a strata lot**

**4** (1) No more than 10 strata lots within the strata plan shall be rented or leased at any one time, but the Strata Council reserves the right to exceed the limitations set out in this Bylaw should it be deemed necessary, based on a hardship case or extenuating circumstances, but for no other reason.

(2) For the purpose of enforcing these limitations, the following administrative provisions apply:

- (a) An Owner who wishes to lease a strata lot shall first obtain approval from the Strata Council. The Owner shall deliver to the Strata Council

or the Property Manager employed by the Strata Corporation a written request for a Lease Permit.

- (b) Upon receipt of a written request for a Lease Permit from an Owner, the Strata Council or the Property Manager employed by the Strata Corporation may within 14 days of receipt of the request either:
  - i) issue a Lease Permit to the Owner, or
  - ii) advise the Owner the request has been denied.

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## **Division 2 – Powers and Duties of Strata Corporation**

### **Repair and maintenance of property by strata corporation**

**8** The strata corporation must repair and maintain all of the following:

- (a) common assets of the strata corporation;
- (b) common property that has not been designated as limited common property;
- (c) limited common property, but the duty to repair and maintain it is restricted to
  - (i) repair and maintenance that in the ordinary course of events occurs less often than once a year; and
  - (ii) the following, no matter how often the repair or maintenance ordinarily occurs:
    - (A) the structure of a building;
    - (B) the exterior of a building;
    - (C) chimneys, stairs, patios, balconies and other things attached to the exterior of a building;
    - (D) doors and windows on the exterior of a building or that front on the common property;
    - (E) fences, railings and similar structures that enclose patios and balconies;
- (d) a strata lot, but the duty to repair and maintain it is restricted to
  - (i) the structure of a building;
  - (ii) the exterior of a building;
  - (iii) chimneys, stairs, patios, balconies and other things attached to the exterior of a building;
  - (iv) doors and windows on the exterior of a building or that front on the common property, excluding non-exposed windows, doors and patios; and
  - (v) fences, railings and similar structures that enclose patios and balconies.

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## **Division 4 – Enforcement of Bylaws and Rules**

### **Maximum fine**

- 23** The strata corporation may fine an owner or tenant a maximum of
- (a) \$50 for each contravention of a bylaw, and
  - (b) \$10 for each contravention of a rule.

### **Continuing contravention**

- 24** If an activity or lack of activity that constitutes a contravention of a bylaw or rule continues, without interruption, for longer than 7 days, a fine may be imposed every 7 days.

**END OF EXAMINATION**