strata corporation may have passed bylaws or entered into agreements with strata lot owners that require an owner to take responsibility for the repair and maintenance of alterations that the owner has made to common property. This practice is discussed at "Alterations to Common Property or Common Assets Made by Strata Lot Owners" and "Alterations to Limited Common Property Made by Strata Lot Owners" in chapter 22. See also *Elahi v. Strata Plan VR 1023*, in which the court held that an owner's obligation to repair and maintain a solarium built on LCP could extend to repairs to adjacent elements of the common property, to the extent that the repairs are attributable to the solarium structure.

III. RESPONSIBILITIES OF STRATA LOT OWNERS [§4.8]

Under the Act, the duties and responsibilities of the strata lot owner with respect to common property and common assets are subordinate to the strata corporation's responsibilities to manage, maintain, and repair the common property and common assets for the benefit of all the owners.

The Standard Bylaws contain a number of provisions dealing with the use and repair of common property and common assets. The strata corporation may amend its bylaws at any time, so it is essential to search the land title office for any bylaw amendments before advising a client on matters concerning repair and maintenance. (For a detailed discussion of bylaws and bylaw amendments, see chapter 11 (Strata Corporation Bylaws and Rules).)

Standard Bylaw 3 governs the use of property, including strata lots, common property, and common assets, by owners, tenants, occupants, and visitors. The general principle is that owners are responsible for their own conduct, as well as the conduct of tenants, occupants, and visitors. With respect to common assets, the duties of an owner under Standard Bylaw 3 apply equally to real property and personal property owned by the strata corporation.

Under Standard Bylaw 3(1), owners, tenants, occupants, or visitors may not use the strata lot, common property, or common assets in a way that:

(1) causes a nuisance or hazard;

(2) causes unreasonable noise;

(3) unreasonably interferes with the rights of others to use and enjoy the common property, common assets, or another strata lot;

(4) is illegal; or

(5) 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.

Standard Bylaw 3(2) further provides that an owner, tenant, occupant, or visitor must not cause damage, other than reasonable wear and tear, to the common property or common assets of the strata corporation.

In keeping with the general duties imposed under the Standard Bylaws, Standard Bylaw 3(3) further requires an owner, tenant, occupant, or visitor to ensure that all animals are leashed or otherwise secured when on the common property or on land that is a common asset.

For cases dealing with nuisance, unreasonable noise, and interference with an owner's use and enjoyment of a strata lot and common property, see *Strata Plan NW 1245 v. Linden*, 2016 BCSC 619 (engaging in harassing and threatening behaviour on common property); *Strata Plan NW 1815 v. Aradi*, 2016 BCSC 105 (Chambers) (smoking on common property); *Strata Plan LMS 2768 v. Jordison*, 2012 BCCA 303; *Strata Plan LMS 4255 v. Newell*, 2012 BCSC 1542; *Chiang v. Yang*, 1999 BCPC 29 (yelling and screaming within strata lot and on common property); *Strata Plan NW 961 v. Leal*, 1996 CanLII 3536 (BC SC) (balcony enclosure obstructing view of neighbouring strata lot); *Carleton Condominium Corp. No. 291 v. Weeks*, [2003] O.T.C. 239 (S.C.J.) (threatening behaviour on common property); *Bond v. Strata Plan VR 2538*, 1996 CanLII 3317 (BC SC) (noise and vapours from a common asset jacuzzi on common property); *Brewster v. New Westminster (City)*, 2006 BCSC 1837 (storage of combustible materials in parking stalls); *Fenby v. Strata Plan NW 228*, 2002 BCSC 936 (planting trees, shrubs, flowers, and paving stones on a common property around a townhouse); and *Boggs v. Harrison*, 2009 BCSC 789, supplementary reasons 2009 BCSC 1132, reconsideration denied 2009 BCSC 1115 (engaging in harassing behaviour on common property, including staring, videotaping and audio recording the plaintiffs, and uttering homophobic slurs). Note, however, the CRT's decision in *Strata Plan LMS 2461 v. Luo*, 2020 BCCRT 1264, where the (CRT) tribunal member held that sending owners abusive and harassing emails and acting in a disruptive way at general meetings could not be a breach of Standard Bylaw 3. As of the

date of the most recent update of this publication, judicial review of this decision was being sought.

Under Standard Bylaw 6, a strata lot owner must obtain the written approval of the strata corporation before making an alteration to common property, including limited common property, or common assets. As the powers and duties of the strata corporation are exercised and performed by the strata council (s. 4 of the Act), written approval is usually obtained from the strata council. The best practice would be for the alteration to be approved by a resolution of strata council that is recorded in the strata council minutes, together with any terms and conditions imposed on the approval by strata council.

Note that if the proposed alteration constitutes a significant change in the use or appearance of the common property or common asset, the proposed alteration must be approved by a 3/4 vote resolution of the owners at an annual or special general meeting unless there are reasonable grounds to believe that immediate change is necessary to ensure safety or prevent significant loss or damage (s. 71). It is the council, acting reasonably, that decides whether an alteration to common property or a common asset constitutes a significant change in use or appearance that must be approved by the strata lot owners.

For a statement of the test on what constitutes a "significant change in use or appearance" of common property, see *Chan v. Strata Plan VR 677* (2 February 2012), Vancouver S115516 (B.C.S.C.) and *Foley v. Strata Plan VR 387*, 2014 BCSC 1333.

In *Chan* and *Foley*, the court provided the following criteria for evaluating whether an alteration to common property is a "significant change" in use or appearance:

(1) whether the change is visible to other residents and the public;

(2) whether the change affects the use or enjoyment of the unit or number of units or an existing benefit of all unit or units;

(3) whether there is a direct interference or disruption to use as a result of the change;

(4) whether the change affects the marketability or value of the unit;

(5) (of potential significance) the number of units in the building, along with the general use, such as whether it is commercial, residential, or mixed-use; and

(6) how the strata corporation governed itself in the past, including whether it permitted similar changes before.

The decision in *Chan* is also an important reminder to practitioners to review the strata plan carefully to confirm that the area affected by the proposed change is actually common property and not strata lot property. In *Chan*, some of the impugned changes were located within the boundaries of the strata lot, although they related to an exterior window. The court held that s. 71 did not apply to those changes. See also the discussion of *Chan* at "Governance" in chapter 11, and see *Davies v. Strata Plan 755*, 2017 BCCRT 71, where the parties argued over repairs to a balcony without realizing that the balcony formed part of the owner's strata lot and not the common property.

The factors in *Chan* were applied in *Wood v. Strata Plan VIS 97*, 2017 BCCRT 12 (removal of trees and other landscaping was not a significant change in use or appearance); and *Foley*. See also *Anthony v. Schnapp*, 2016 BCSC 1839, for a case in which the "*Foley* test" was applied in a duplex strata development. Section 71 is a frequent topic of CRT decisions, and the *Foley* test is cited in numerous CRT decisions.

If a proposed alteration to common property by an owner is required to address a matter of safety, s. 71(a) will have no application. The matter may be more appropriately dealt with under s. 71(b), which provides that a strata corporation may approve a significant change in the use or appearance of common property if there are reasonable grounds to believe that immediate change is necessary to ensure safety or prevent significant loss or damage (*Frank v. Strata Plan LMS 355*, 2016 BCSC 1206, affirmed 2017 BCCA 92).

The *Frank* decision concerned an alteration to a penthouse that would provide direct access from a penthouse strata lot to a rooftop LCP patio. Part of the alteration required increasing the height of the existing patio railings in order to bring them up to the requirements of the B.C. Building Code.

The COVID-19 pandemic saw s. 71(a) and (b) considered by the CRT in the context of pools and recreational facilities. In both cases, the CRT ruled that closing such a facility was a significant change in the use or appearance of common property that required a 3/4 vote, unless the facilities were ordered to be closed by the local health authorities. See: *Renaud v. Strata Plan 38*, 2020 BCCRT 815; *Brogan v. Strata Plan 845*, 2020 BCCRT 1196; and *Oja v. Strata Plan VIS4078*, 2021 BCCRT 69.

There is a considerable volume of case law dealing with unauthorized alterations to common property and common assets (see "Alterations by Owners" in this chapter). The general rule is that alterations to

common property and common assets that have not been approved in writing in advance by the strata council will violate the strata corporation's bylaws, requiring the strata corporation to enforce compliance with the bylaws, including imposing fines and taking steps to remedy the contravention. (For information on enforcement of bylaws and rules, see chapter 11 (Strata Corporation Bylaws and Rules).)

Standard Bylaw 8 makes the strata corporation responsible for repair and maintenance to LCP that occurs less frequently than once a year, and certain components of the buildings (such as the structure or exterior of the building, and things attached to the exterior of the building) regardless of how often the repair and maintenance occurs. (For more information, see "Windows, Doors, and Skylights" in chapter 22.)

The effect of Standard Bylaw 8, therefore, is to limit an owner's responsibility for repairs and maintenance of LCP to what is commonly understood as "regular maintenance"; that is, maintenance that occurs more than once a year, other than the maintenance of the building structure, exterior, or things attached thereto (see also *Lim v. Strata Plan VR 2654*, 2001 BCSC 1386 at para. 63, where it was held that owners are responsible for maintaining limited common property only to the extent that their use of it creates additional expenses; and *Elahi v. Strata Plan VR 1023*, 2011 BCSC 1665).

IV. OWNERSHIP OF COMMON PROPERTY [§4.9]

A. NATURE OF COMMON PROPERTY OWNERSHIP [§4.10]

Under s. 66, each strata lot owner owns the common property and common assets of the strata corporation as a tenant in common in a share proportionate to the unit entitlement of the owner's strata lot, divided by the total unit entitlement of all the strata lots. For example, in an apartment-style strata development, the owner has a fee simple interest in their strata lot and a proportionate interest, as a tenant in common with the other owners, in the common property and common assets of the strata corporation.

The strata corporation exercises exclusive control over the use and maintenance of the common property and common assets, subject to qualifications described in this chapter.