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Kevin Zakreski
BC Law Institute
1822 East Mall
University of British Columbia
Vancouver, BC, V6T 1Z1

Dear Mr. Zakreski:

***Re: Consultation Paper on Common Property, Land Titles, and Fundamental Changes for Stratas***

The Urban Development Institute – Pacific Region (UDI) would like to thank the BC Law Institute (BCLI), and in particular the Strata Property Law (Phase Two) Project Committee(Committee), for their extensive work in developing recommendations to improve the *Strata Property Act* (*SPA*). Prior recommendations from BCLI have already led to important changes to the SPA.

We are pleased to provide UDI's comments regarding the *Consultation Paper on Common Property, Land Titles, and Fundamental Changes for Stratas*. Our responses to the recommendations come from UDI's Real Estate Legal Issues Committee. We have focused our comments on those matters that could affect the development industry and the homebuyer that we serve.

**Recommendations 1 and 2**

We are supportive of these recommendations.

**Recommendations 3 and 4: *Common Property – Transactions Involving Common Property***

UDI does not support recommendation #3 to limit leases for common asset fixtures to no more than five years. It is not readily apparent to us that there is material problem, notwithstanding commentary in the *Consultation Paper* regarding "indications of frustration within the strata sector". The *Consultation Paper*, while generally detailed in its notations, provides no context for these apparent frustations, the circumstances in which they have arisen and how frequently they have occurred. In the absence of this information, this appears to be a solution in search of a legitimate problem.

As local governments and other authorities having jurisdiction exercise greater activism in the imposition of ancillary development requirements on new projects, developers are required to provide and strata corporations are being forced to accept increasingly complex and expensive infrastructure works as common property fixtures. Examples include district energy

infrastructure and electric vehicle (EV) charging equipment. In most instances, it is not possible to acquire these fixtures on lease terms of five years or less, or to do so on financially reasonable terms that will not create a material burden on the strata corporation and its constituents. In many instances, an automatic termination clause that triggers repossession of mandatory fixtures would expose strata corporations to legal actions by local governments for non-compliance with development permit obligations or would impose a material financial burden to replace required equipment.

In the context of our response to recommendation #3, recommendation #4 is moot. If recommendation #3 were to gain support from the Province, we have no issue with recommendation #4.

**Recommendation 5: *Common Property – Transactions Involving Common Property***

In the context of our response to recommendation #3, recommendation #5 is moot.

If recommendation #3 were to gain support from the Province, we would support a mechanism that provides a body such as the Office of the Superintendent of Real Estate for British Columbia the authority to extend common property/asset leases beyond the five-year limit, provided that it could do so on a blanket exemption basis by fixture type rather than on a project by project basis (e.g. for fixtures such as low carbon energy systems, EV charging systems and complex heating and cooling systems).

**Recommendation 6: Common Property – Parking Stalls and Storage Lockers**

UDI rejects the Committee's recommendation #6 and strongly cautions against any move to prohibit or make void leases or licences for parking stalls or storage lockers in the absence of the concurrent creation of a new secure and flexible form of parking and storage tenure. This recommendation does not serve the best interests of strata lot owners (although we appreciate that it may make easier the jobs of some strata managers and self-managed strata corporations).

The sale of strata lots and parking stall rights (and, to a lesser extent, storage locker rights) has evolved in recent years whereby it is increasingly uncommon for a strata lot to be sold with a dedicated parking stall. Local governments establish parking requirements for developments but the stalls themselves are now often sold and priced separately from the strata lot. When purchasers sign a pre-sale contract, they often do not know what their parking requirements will be. The use of leases (or, more rarely, licences) provides flexibility to purchasers and developers alike.

The Committee states "this approach … often seems to benefit the owner-developer's short-term interest, while contributing little to the long-term interests of the strata corporation." This statement is objectively and subjectively inaccurate. There is a long history in B.C. strata projects – whether under the *Condominium Act* or the SPA – of using leases and licences to allocate parking and storage rights. The use of these agreements reflects the inflexible requirements of the legislation as it pertains to limited common

property, which provides a more secure tenure for strata lot owners. These agreements are also often required in multi-phase projects and for adjacent (but separate) strata corporations, in each instance with shared parking facilities.

We are disappointed that the Committee has casually dismissed the most common form of tenure for parking stalls and storage lockers without seizing the opportunity to identify, consider and recommend improved regimes for providing strata lot owners secure tenures over parking stalls and storage lockers, while concurrently having a definitive register of such tenures that would allow those tenures to be transferred among strata lot owners without the need for strata votes (unanimous or otherwise).

The Committee has expressed concern about "confusion", "conflict" and "frustration" resulting from the current use of leases and licences; however, in our opinion and experience, the implementation of the Committee's recommendation would result in much higher instances of each should the allocation and management of parking stalls and storage lockers solely be left in the hands of a strata council or strata manager. Furthermore, any attempt to void existing agreements would most certainly lead to chaotic results and, inevitably, litigation as a result of what would effectively be an expropriation of an owner's tenure without compensation for the value paid for that tenure.

As noted above, any attempt to make void parking leases and licencese must occur concurrently with the creation of a new form of secure and flexible tenure. An example would include the creation of a new category of limited common property unique to parking stalls and storage lockers that would allow strata owners to exchange parking stalls and storage lockers without the requirement for a unanimous resolution.

**Recommendation 7: Common Property – Parking Stalls and Storage Lockers**

We support the revisions to section 258 of the SPA with the following amendments:

1. The proposed three-year period should be extended to five years regardless of ongoing ownership of a strata lot by a developer.

2. The scope of section 258 should also be extended to storage lockers.

3. Section 258 should include an exception to the requirement for a unanimous vote to change limited common property for the circumstance in which two owners wish to switch parking stalls. A form of registrable exchange/transfer that could be signed in the same manner as a Form A Transfer could be devised to be registered in the Land Title Office with an acknowledgement from the strata corporation.

**Recommendation 8: Common Property – Parking Stalls and Storage Lockers**

We do not see a purpose for this recommendation. This could prevent a strata corporation from passing a ¾ vote or unanimous resolution to

designate parking stall common property as limited common property in subsequent years.

**Recommendation 9: whether all strata plans should require approval of the Approving Officer**

UDI supports this recommendation. There is no discernable benefit to adding another layer of approval to a process that has not required it.

**Recommendation 10: Depicting the Boundaries of Strata Lots and Common Property**

We take no position on this recommendation.

**Recommendation 11: Prior occupancy**

We support this recommendation as we believe it is consistent with the intentions of the SPA.

**Recommendation 12: Depicting the Boundaries of Strata Lots and Common Property**

We do not support this recommendation. Currently, common property can be identified either by notation or by the absence of any notation. It should be clear that what isn't denoted on a strata plan as being something other than common property is therefore common property. A requirement to denote all common property is more likely to lead to confusion, if not litigation, in the event of oversights. As noted in the Consultation Paper, "[i]t isn't clear that anyone is calling for this specific amendment. It also isn't clear that it is needed." We agree.

**Recommendations 13 and 14: Depicting the Vertical Limits of Limited Common Property for Strata Plans**

UDI is generally supportive of these recommendations as they add clarity to strata plans but is mindful of adding material requirements and expense that do not provide material benefit. Greater clarity is required to identify what problem is to be corrected.

**Recommendation 15: Depicting the Vertical Limits of Limited Common Property for Strata Plans**

We do not support this recommendation. To echo the commentary with respect to recommendation #12: it is not clear that anyone is calling for this specific amendment and it also is not clear that it is needed.

**Recommendation 16: Certificate of Payment**

We take no position on this recommendation.

**Recommendations 17 to 20: Fundamental Changes – Amending a Strata Plan**

Please note the comments UDI provided above with respect to recommendations #6 and #7.

We support recommendations #17, #18 and #19.

UDI is prepared to support recommendation #20 if amended as follows: "*The Strata Property Act should require a resolution passed by an 80-percent vote to authorize amending a strata plan to add a strata lot to common property* **but only if the vote in favour of the amendment includes the approval of the owner of the affected strata lot**."

**Recommendations 21 to 24: Schedules to the Strata Plan.**

We take no position on these recommendations.

**Recommendation 25: Amalgamation.**

We take no position on this recommendation.

UDI would again like to thank BCLI and the Committee for their work to improve the SPA and for preparing the *Consultation Paper*. While we do not support all of the Committee's recommendations, these are important issues that need to be considered. If the BCLI or the Committee have any questions regarding UDI's comments, please do not hesitate to contact us. We look forward to working with BCLI on this and other initiatives.

Yours sincerely,

Anne McMullin
President & CEO