

Guide 2: The Role and Responsibilities of Owner Developers

The Act clearly sets out some unique obligations of the Owner Developer from the date that the strata corporation is created by the deposit of the strata plan in the Land Title Office until two years following the strata corporation's first annual general meeting ("First AGM"). Please review the following to determine the role and responsibilities of Owner Developers throughout this period.

Disclaimer: the guides are periodically updated by the Office of Housing and Construction Standards as indicated by 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. Who is the Owner Developer?

An "Owner Developer" is defined in the Act as:

- the owner of freehold land shown on a strata plan at the time that the strata plan is filed;
- the holder of the ground lease shown on a leasehold strata plan at the time that the strata plan is filed;
- a person who acquires all of the strata lots in a strata plan from the original Owner Developer; or
- a person who acquires more than 50% of the strata lots from the original Owner Developer.

[Note: This may result in there being two separate Owner Developers within a single development.]

2. Creating the Strata Corporation

The Owner Developer creates the strata corporation, which is a legal entity, by registering a strata plan in the Land Title Office.

The Land Title Office will assign a number to the strata corporation. This will become the legal identity of the strata corporation. Examples of strata corporation numbers are LMS 1234 or KAS 9876.

The name of the strata corporation is "The Owners, Strata Plan, (*the registration number of the strata plan*)".

Strata corporations are created under the *Strata Property Act* (the "Act"), and not the *Business Corporations Act*. This means that:

- there is no incorporation certificate for a strata corporation; and
- the Registrar of Companies does not regulate strata corporations.

3. Amending the Bylaws

When the Owner Developer files the strata plan in the Land Title Office, he or she can amend the Standard Bylaws or create new bylaws by filing an “Owner Developers’ Notice of Different Bylaws” (Form Y) concurrently with the strata plan.

New bylaws are commonly filed by Owner Developers to:

- create separate sections within the strata corporation;
- create rental restrictions; and
- apportion expenses by type of strata lot.

New bylaws will not be valid if they contradict the Act, the Regulations or any other legislation.

4. Obligations of the Owner Developer Prior to the First AGM

Once a strata corporation has been created, Owner Developers have numerous obligations prior to the First AGM of the strata corporation. Owner Developers must:

- exercise the powers and perform the duties of the strata council, which include:
 - collecting strata fees from owners when they come due, including from themselves, if they still own strata lots;
 - calling and conducting special general meetings;
 - paying strata corporation bills beginning one month following the first conveyance of a strata lot;
 - exercising the power to grant owners or tenants the right to exclusively use common property;

[For a more detailed explanation of strata council duties, please refer to Guide 4, “The Role and Responsibilities of the Strata Council”.]
- exercise reasonable care and skill when acting as the strata council;
- prepare a twelve month interim budget and provide it to purchasers prior to entering into contracts with purchasers;
- always act in good faith with a view to the best interests of the strata corporation;
- pursue all warranty remedies with respect to the construction of the common property and common assets;
- ensure that the term of any insurance policy for the strata corporation continues for at least four weeks following the date of the First AGM;
- not enter into a contract with the strata corporation after the first conveyance of a strata lot, unless the contract is approved by a unanimous resolution at a special general meeting. Persons who are not at arm’s length to the Owner Developer also

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cannot enter into a contract with the strata corporation after the first conveyance of a strata lot, unless the contract is approved by unanimous resolution.

- prepare the strata corporation for its First AGM;
- ensure that after the conveyance of the first strata lot but before the First AGM, all resolutions ordinarily requiring approval by a $\frac{3}{4}$ vote, but which need to be passed by a unanimous resolution during this period, are approved accordingly; and
- establish a contingency reserve fund at the time of the first conveyance of a strata lot to a purchaser.

[Please refer to part 12 of this guide, "Seeding the Contingency Reserve Fund", for an explanation of the amount that the Owner Developer must contribute to the contingency reserve fund.]

5. When the First AGM is Held

The Owner Developer must ensure that the First AGM takes place within six weeks of the earlier of the following dates:

- nine months from the date of the first conveyance of a strata lot; or
- the date that 50% plus one of the strata lots are conveyed to purchasers.

If the Owner Developer does not hold the First AGM by the required date, then the Owner Developer will owe the strata corporation:

- \$1,000 if the First AGM is delayed by up to thirty days; and
- \$1,000 for each additional delay of seven days after the initial thirty day period.

The strata corporation can collect the amount owing by the Owner Developer for failing to hold the First AGM within the required time by registering a lien against one of the Owner Developer's strata lots, if the Owner Developer still owns one or more strata lots.

6. If the Owner Developer Fails to Hold the First AGM

If the Owner Developer fails to hold the First AGM within the required time, then:

- an owner may hold the First AGM, provided that he or she gives two weeks' notice to all persons to whom the Owner Developer should have given notice, and to the Owner Developer;
- the Owner Developer will owe the strata corporation \$1,000 if the First AGM is delayed by up to thirty days, and \$1,000 for each additional delay of seven days after the initial thirty day period; and

[See part 5 of this guide for an explanation of how this penalty applies.]

- any penalty owing to a strata corporation by an Owner Developer by reason of failing to hold the First AGM within time, can be collected by the strata corporation

registering lien against one of the Owner Developer's strata lots, if the Owner Developer still owns one or more strata lots.

7. Documents to be Prepared by the Owner Developer for the First AGM

The Owner Developer must prepare three documents for the First AGM, these are:

- the Notice of the First AGM, which sets out:
 - a description of the matters to be voted on; and
 - the exact wording of resolutions requiring a unanimous or $\frac{3}{4}$ vote.
- an annual budget of the strata corporation, which details:
 - the opening balance in the operating fund and contingency reserve fund, which is the surplus or deficit from the year or partial year just ending;
 - the estimated income from all sources other than strata fees, itemized by source;
 - a list of the estimated expenditures from the operating fund, including a list of all expenditures that relate exclusively to:
 - a type of strata lot identified as a type in a bylaw;
 - limited common property; and
 - strata lot repair and maintenance that the strata corporation has taken responsibility for, by bylaw.
 - the total of all estimated expenditures from the operating fund;
 - the total of all contributions to the operating fund;
 - the total of any contributions to the contingency reserve fund;
 - each strata lot's monthly contribution to the operating fund and the contingency reserve fund - this sum is called a strata fee; and
 - the estimated balance in the operating fund and contingency reserve fund at the end of the fiscal year.
- a financial statement, from the first day of the period covered by the interim budget to a date that is within six weeks of the First AGM. The financial statement must set out:
 - the opening and current balance in the operating fund;
 - the opening and current balance in the contingency reserve fund;
 - the details of the strata corporation's income from all sources, except special levies;
 - the details of expenditures from the operating fund, including details of any unapproved expenditures;
 - the details of expenditures from the contingency reserve fund, including details of any unapproved expenditures; and

- income and expenditures by special levy, if any.

8. Providing Notice of the First AGM

The Owner Developer must distribute the Notice of the First AGM, proposed budget and financial statements to:

- all owners;
- mortgagees who have given the strata corporation a “Mortgagee’s Request for Notification” (Form C);
- tenants who have been assigned the owner’s right to vote, by either:
 - being a family member as defined in the Regulations;
 - entering into a lease of three years or more; or
 - the landlord delivering a written notice to the strata corporation which discloses the terms of the voting assignment.

The Notice and accompanying documents must be delivered to all persons entitled to notice of the First AGM two weeks prior to the date of the First AGM. [For a more detailed explanation of how to deliver notice of an AGM, please refer to “*Guide 7: How to Prepare for an AGM*”.]

9. Documents Which the Owner Developer Must Present at the First AGM

At the First AGM the Owner Developer must give the strata corporation copies of the following:

- all plans required to obtain a building permit and any amendments to the building permit plans;
- any document in the Owner Developer’s possession that indicates the location of pipes, wires, cables, chutes, ducts, or other service facilities that are not located as shown on the plan or plan amendments filed with the building permit issuer;
- all contracts entered into by the strata corporation;
- any Disclosure Statement and any amendments filed under the *Real Estate Development Marketing Act*;
- any Rental Disclosure Statement (Form J) filed by the Owner Developer with the Superintendent of Real Estate;
- the registered strata plan from the Land Title Office and any plan amendments;
- the names and addresses of contractors, subcontractors and persons who primarily supplied labour or materials to the project;
- the names and addresses of technical consultants, including building envelope specialists, if any;

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- the name and address of any project manager;
- all warranties, manuals, schematic drawings, operating instructions, service guides, manufacturers' documentation and other similar information relating to common property or common assets;
- minutes of special general meetings, including the results of any votes;
- a list of owners, with their strata lot addresses, mailing addresses if different, strata lot numbers as shown on the strata plan, parking stall numbers, if any, and unit entitlements;
- names and addresses of mortgagees who have filed a "Mortgagee's Request for Notification" (Form C);
- names of tenants;
- assignments of voting or other rights by landlords to tenants;
- books of account showing money received and spent and the reason for the receipt or expenditure;
- the Act and Regulations;
- a copy of the strata corporation's bylaws and rules;
- resolutions that deal with changes to common property, including the designation of limited common property;
- any waivers of special general meetings;
- any decision of an arbitrator or judge in a proceeding in which the strata corporation was a party, and any legal opinions obtained by the strata corporation;
- income tax returns, if any;
- correspondence sent or received by the strata corporation and council;
- bank statements, cancelled cheques and certificates of deposit;
- any "Information Certificates" (Form B) issued by the strata corporation; and
- the strata corporation's first annual budget for approval by the strata corporation.

If the Owner Developer fails to provide the above documents, and the strata corporation must pay money to obtain any missing documents, the Owner Developer will owe that sum of money to the strata corporation. This sum can be collected by the strata corporation registering a lien against one of the Owner Developer's strata lots, if the Owner Developer still owns one or more strata lots.

10. Conducting the First AGM

The Act provides that the chair of the First AGM will be one of the following:

- the Owner Developer acting personally or through an agent; or

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- an individual elected by the voters who are present at the meeting in person or by proxy, if the Owner Developer is unwilling or unable to act as chair.

If the Owner Developer still owns one or more strata lots, the Owner Developer is entitled to:

- participate in the meeting as an owner and vote with the voting entitlement of all retained strata lots; and
- be eligible for election to the strata council. If the Owner Developer is elected to the strata council, he or she will still have a duty to act in the best interests of the strata corporation.

11. Expenses Exceeding Interim Budget

During the period beginning one month after the first conveyance of a strata lot until the First AGM, if the actual strata corporation expenses exceed the estimated expenses set out in the interim budget, the Owner Developer must pay the difference to the strata corporation within eight weeks of the First AGM.

Owner Developers who seriously underestimate the interim budget must pay additional amounts to the strata corporation. If the actual expenses are more than that set out in the interim budget by:

- 10% to under 20%, the Owner Developer must pay an additional amount which is equivalent to the excess multiplied by two.
- 20% or more, the Owner Developer must pay an additional amount which is equivalent to the excess multiplied by three.

Any penalty owing to a strata corporation by an Owner Developer underestimating the interim budget, can be collected by the strata corporation registering a lien against **one** of the Owner Developer's strata lots, if the Owner Developer still owns one or more strata lots.

12. Seeding the Contingency Reserve Fund

At the time of the first conveyance of a strata lot to a purchaser, the Owner Developer must establish a contingency reserve fund by making a minimum contribution to that fund.

If the first conveyance of a strata lot in a development occurs no later than one year after the deposit of the strata plan, the minimum contribution must be 5% of the estimated operating expenses as set out in the interim budget.

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If the first conveyance of a strata lot in a development occurs later than one year after the deposit of the strata plan, the minimum contribution is the lesser of:

- 5% of the strata corporation's operating expenses as set out in the interim budget, multiplied by the number of years or partial years since the deposit of the strata plan; and
- 25% of the strata corporation's operating expenses as set out in the interim budget.

13. After the First AGM

The Owner Developer must do the following after the First AGM:

- within one week of the First AGM, transfer control of the strata corporation's money, keys, and garage openers to the new strata council;
- ensure that the strata corporation's insurance coverage continues for at least four weeks from the date of the First AGM; and
- deliver an updated financial statement to the strata council within eight weeks of the First AGM. The updated financial statement must be updated to the date the new budget takes effect, or, if no budget was approved at the First AGM, the date of the First AGM.

14. Marketing of Strata Lots by Owner Developers

The Standard Bylaws contain the following provisions which deal with the marketing of strata lots:

- an Owner Developer who has an unsold strata lot may carry on sales functions that relate to its sale, including the posting of signs; and
- an Owner Developer may use a strata lot that the Owner Developer owns or rents, as a display lot for the sale of other strata lots in the strata plan.

References:

Sections of the Act: 1, 2, 5-7, 10-23, 45, 116, 121, 245

Sections of the Regulations: 3.1-3.3, 14.6, Part 17

Standard Bylaw: 30

A Summary of Triggering Events for Owner Developers

Triggering Events	Owner Developer's Obligations Or Other Requirements Which Are Triggered By The Event
Building is developed	The Owner Developer must pay all expenses for the development, until one month after the first conveyance of a lot.
First purchase contract signed by Owner Developer	Prior to this occurrence, the Owner Developer must have prepared a 12 month interim budget and delivered it to the first purchaser. All subsequent purchasers must get a copy of the budget prior to entering into contracts.
Strata Plan is filed	The Owner Developer acts on behalf of the strata corporation until the strata council is elected at the First AGM.
First conveyance to a purchaser	If the first conveyance of strata lot is no later than 1 year after the deposit of the strata plan, the Owner Developer must contribute 5% of the estimated operating expenses set out in interim budget to the contingency reserve fund. If the first conveyance of strata lot is later than 1 year after the deposit of the strata plan, the Owner Developer must contribute an amount to contingency reserve fund, as set out in section 12.
After first conveyance	The Owner Developer can no longer enter into a contract with the strata corporation, unless the contract is approved by a unanimous vote at a special general meeting. Most $\frac{3}{4}$ votes of the strata corporation can only be passed by unanimous resolution at a special general meeting, until the First AGM.
One month after first conveyance	The Owner Developer stops paying for all of the expenses of the development, and the Strata Corporation pays these expenses, as per the budget.
50 % plus 1of lots conveyed to purchasers	If this occurs before the 9 month period from the filing of the strata plan, the Owner Developer must hold the First AGM, within 6 weeks of this occurrence.
9 months from the date strata plan is filed	If there is less than 50 % plus 1 of the strata lots conveyed to purchasers, the Owner Developer must hold the First AGM within 6 weeks of this date.

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Triggering Events	Owner Developer's Obligations Or Other Requirements Which Are Triggered By The Event
First AGM	The Owner Developer must provide the strata corporation with the first annual budget, and other information, including: building permit plans, strata corporation contracts, warranties and manuals for common property and assets, and all usual records. The strata council is elected, and the Owner Developer no longer acts for the strata corporation.
Within 1 week after First AGM	The Owner Developer must transfer control of the strata corporation's money, keys, and garage openers to the new strata council.
4 weeks after the First AGM	The Owner Developer must ensure that strata corporation's insurance coverage is in place until this date.
8 weeks after the First AGM	The Owner Developer must have delivered the strata corporation's updated financial statement prior to this date. The statement must end with the date that the new budget takes effect, or the date of the First AGM, if no new budget was approved.
2 years after First AGM	The Owner Developer must keep and make available to the strata corporation all financial records up to the date that control of the strata corporation money is transferred to the strata council.