

Is your Condo Legal?

Protection of Persons and Property

The majority of local governments in BC regulate construction by-law in the public interest for reasons of health, safety and the protection of persons and property.

Safe and Protected?

Building bylaws typically list a number of *Health and Safety Aspects of the Work* that are confirmed as being substantially met by the issuance of a written confirmation of compliance typically, an occupancy permit. Until this document has been issued it is unlawful to occupy a condo (strata lot) or any part of a building or structure that is part of the strata corporation common property. This includes hallways, elevators, access stairs, exits, common spaces and parkades that are part of the strata plan. Without this document, the building and/or structure is not deemed safe and protected.

Even if a written confirmation of compliance (occupancy permit) has been issued the document could be held invalid, if the information on it is inaccurate and/or incomplete. In such situations, occupancy by any person is unlawful.

The elected politicians, of a local government, have the option to regulate construction by law. They are not required to do so. In choosing to mandate a corporate service by-law for reasons of health, safety and the protection of persons and property, the elected politicians assume the responsibility for ensuring that the corporate service substantially delivers protection of health, safety and persons and property and that no person occupies a building or part of it until such time as a written confirmation of compliance (occupancy permit) has been issued. The lack of written confirmation of compliance could present problems for owners of condominiums in obtaining financing, refinancing or insurance, if not disclosed and/or if requested by a financial institution or insurer.

What should an Occupancy Permit for a Strata Lot look like?

Having been unable to obtain an occupancy permit for a strata lot, it is not possible for the writer to state what it should look like. The strata title process subdivides buildings and structures into strata lots with the land as a component of common property. This transforms a simple freehold

estate lot with buildings and structures on it into a very different legal structure. This raises a number of questions including but not limited to:

- Does every strata lot need its own occupancy permit?
- Does common property need a separate occupancy permit issued in the name of the strata corporation?

Which came first, the Occupancy Permit or the Strata Plan?

If one is provided a copy of an occupancy permit for a condo, the first thing to check is the dates on the strata plan and occupancy permit. If the occupancy permit, is dated before the date on the strata plan, it may be valid. *If the occupancy permit is dated after the date on the strata plan the key information to check is the legal description of the property on each document.*

Change in Legal Structure

Permits for the construction of buildings and/or structures are issued in the name of the owner developer, under the legal address of the land, subject to the permit. Once the project is strata-titled, the legal description changes to the owner as the newly formed strata corporation and the individual owners of strata lots.

No Standard

One problem is that there does not appear to be a standard format, let alone a standard for the information that should be on an occupancy permit. At this point, it is not possible to state, with any certainty, what non-strata occupancy permits should look like, much less a strata occupancy permit, in terms of format and information. This issue may need to be ultimately determined by lawyers or even the Courts.

The following samples show what a regular Occupancy Permit and an Occupancy Permit for a Strata Lot might look like. A separate Occupancy Permit in the name of the strata corporation may be necessary for the Common Property because every owner of a strata lot owns a unit entitlement share of common property as tenants in common.

Non-Strata Lot

OCCUPANCY PERMIT

DATE March 21, 2022 BUILDING PERMIT NO. BP-1234/22

CIVIC ADDRESS 1234 Anywhere Street

LEGAL DESCRIPTION Lot: 1 Plan: XYX1234

REGISTERED OWNER MAXOUT Builders

PROJECT DESCRIPTION Residential Suites/Commercial units

"This Occupancy Permit is issued pursuant to Section 297 (1) of the Local Government Act and Section 12 of "Building Bylaw No. 1234, 2022" of the District of the Nowhere. This permit confirms that no substantive violations of health and safety regulations and applicable statutes have been observed. Issuance of this permit in no way relieves the owner from full responsibility for compliance with all health and safety requirements established by statute, regulation or bylaw.

This permit is not a warranty that the subject of this permit complies with all municipal and provincial regulations governing zoning and building construction, nor that it is without defect."

BUILDING OFFICIAL

SIGNATURE

The District of the Nowhere

123 ABC Street,
Nowhere, BC

Strata Lot

OCCUPANCY PERMIT

DATE March 21, 2022 BUILDING PERMIT NO. BP-1234/22

CIVIC ADDRESS 1234 Anywhere Street

PARCEL IDENTIFIER: 031-215-211

LEGAL DESCRIPTION

PID 031-215-211, STRATA LOT 46 DISTRICT LOT 401

GROUP 1 NEW WESTMINSTER DISTRICT STRATA PLAN EPS 4632 TOGETHER WITH AN INTEREST IN THE COMMON PROPERTY IN PROPORTION TO THE UNIT ENTITLEMENT OF THE STRATA LOT AS SHOWN ON FORM V

REGISTERED OWNER No One in Particular

PROJECT DESCRIPTION Freehold Estate Strata Lot

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SIGNATURE

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