

Building Schemes

– or –

Who says I can't paint my house purple???

When purchasing a home or property, you are often presented with a stack of papers by your lawyer, notary or realtor. Among them might be a mysterious document called a statutory building scheme. One of the first questions that might pop into your head is “What does it mean, and what does it mean to me?”

This section is meant to provide you with a little bit of a background on what they are all about. But if you really need to know about a building scheme and how it can affect the use and enjoyment of your property, please be sure to contact your lawyer or notary. The information contained here is intended to answer some basic questions.

“What is a Building Scheme?”

According to British Columbia's Land Title Act, a building scheme “means a scheme of development that comes into existence where defined land is laid out in parcels and intended to be sold to different purchasers or leased or subleased to different lessees, each of whom enters into a restrictive covenant with the common vendor or lessor agreeing that his or her particular parcel is subject to certain restrictions as to use, the restrictive covenants constituting a special local law applicable to the defined land and the benefit and burden of the covenants passing to, as the case may be, the purchaser, lessee or sublessee of the parcel and his or her successors in title”.

So what does that mean? Essentially, a building scheme is a set of restrictions or requirements that are imposed on the owner or leaser of a property, usually to enhance the value of a property.

Typical restrictions or requirements deal with building sizes, styles, finishes or colours. A scheme might include landscaping standards or requirements on where vehicles or equipment can be stored on the property. In some cases, a building scheme may have restrictions on how the property can be used. The following example is taken from a building scheme registered on properties in a subdivision in Port Hardy:

No improvement shall be used for any purpose other than as a single-family residence. Without limiting the generality of the foregoing, no improvement shall be used for the purposes of any profession, trade, vocation, commercial enterprise of any description, nor as a hospital, charitable, religious or education institution, day care facility, apartment, boarding, bed and breakfast, or lodging house.

It even prohibits tents!!

No tent or other temporary structure of any kind shall be erected on any lot or used for any purpose. No shack or cabin shall be erected on any lot or be used either temporarily or permanently as a residence. No basement, garage or outbuilding shall be used as a separate residence, either permanently or temporarily.

In the Port Hardy example, the scheme also regulates the height of buildings and trees. As stated in the scheme, this restriction is for the sole benefit of neighbouring lots:

In order to maintain view sight lines for the benefit of the Owners of Lots 1 through 8 inclusive, the maximum height of any tree or building erected on Lots 9 through 17 inclusive shall be as follows: . . .

A building scheme will often have requirements that go beyond municipal standards. While a local zoning bylaw may allow home occupations to be carried out, or a duplex home to be constructed on a property, a building scheme may prohibit these things from happening on lots within the building scheme area.

What about enforcement?

Building schemes are agreements that are put in place for the benefit of the property owners in a particular development. The agreement is private and only affects the properties within the area identified in the building scheme. Being a private agreement, it is up to the people within the building scheme area to enforce its conditions. The only people who can enforce the terms of the agreement are people who own property within the building scheme area.

A third party, such as a municipality or a neighbour outside of the building scheme, has no ability to have the terms of the agreement enforced. Although the matters addressed in the building scheme are often issues that are dealt with in local zoning bylaws, a municipality does not have any authority to require compliance with the specifics of a building scheme if those specifics are not expressly included in a municipal bylaw.

How do I get a building scheme enforced?

If a neighbour is doing something that is in contravention of your building scheme, the first thing to do would be to contact the neighbour and let them know of the contravention. Often people will own property that has a building scheme registered on it but be unaware of the requirements of the scheme.

Once informed of the contravention, the problem might be taken care of. If this approach doesn't work, the next step would be to contact the developer if the developer still owns property within the building scheme and ask that they enforce the building scheme. If the developer no longer owns property in the scheme area, then you will need to contact your lawyer and have them review the building scheme to determine if it is a valid scheme and then have the lawyer contact the neighbour. It may also be possible to have the matter handled on your own through small claims court. We recommend that you always obtain legal advice before any such action, as this process can be difficult.

To avoid having your neighbour take you to task, it is advisable to check your title to first determine if your property is subject to building scheme and, if so, what requirements are included.

How can I determine if my property or my neighbour's property has a building scheme?

If you are buying, talk to your realtor. Registered building schemes will need to be disclosed by the seller. Your realtor, lawyer, or someone well versed in real estate law can help you understand what the scheme means to you.

If you already own and want to know about your property or perhaps your neighbour's, a great place to start is the BC Land Title Office website at <http://www.ltsa.ca/cms/conducting-a-title-search>. Working directly with the Land Title Office in Kamloops or with the help of a real estate professional, you can get a copy of the title as well as any registered building scheme. To make it easier to get these documents, you will need to know either the legal description, or the 9-digit Parcel Identifier Number (PID), or the current title number of the property.