

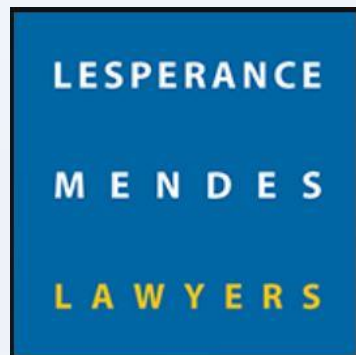


Responsibility for Repairs

claims below the deductible

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March 10, 2020





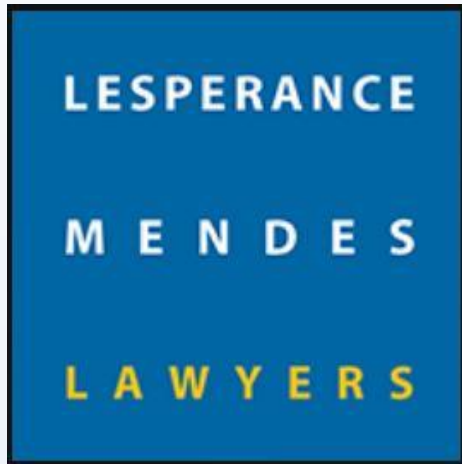
About me



- Practicing since 1994
- Strata Law since 2001
- Editorial Board of the CLE SPA Practice Manual
- Frequent speaker
- Litigated in every level of Court in BC including the CRT.



About Lesperance Mendes



**Advice for owners,
From the ground up!**

- Since 1997
- Strata Law
- Construction Law
- Building Defect Claims
- Building Warranty Claims (2-5-10)
- Contaminated Sites
- General Commercial Litigation



Overview

- Responsibility for repairs is determined by section 72 of the Act and the strata corporation's bylaws
 - What caused the damage is irrelevant
 - Whether the item is insured and who obtained insurance is irrelevant



Duty to Repair under the SPA

Repair of property

72 (1) Subject to subsection (2), the strata corporation must repair and maintain common property and common assets.

(2) The strata corporation may, by bylaw, make an owner responsible for the repair and maintenance of

(a) limited common property that the owner has a right to use, or

(b) common property other than limited common property only if identified in the regulations and subject to prescribed restrictions.

(3) The strata corporation may, by bylaw, take responsibility for the repair and maintenance of specified portions of a strata lot.



Duty to Repair under the Standard Bylaws

- **Standard Bylaw 2**, Repair and maintenance by owner
- **Standard Bylaw 8**, Repair and maintenance by strata corporation



Duty to Repair under the Standard Bylaws

STRATA CORPORATION'S DUTY TO REPAIR	STRATA CORPORATION'S DUTY TO INSURE
common property	common property
common assets	common assets
limited common property unless it is the owner's responsibility in the bylaws	limited common property
those portions of a strata lot set out in the bylaws (i.e. windows and doors)	Building on strata plan and fixtures built or installed by the owner developer as part of the original construction (i.e. floor coverings, wall coverings, built in cabinets)

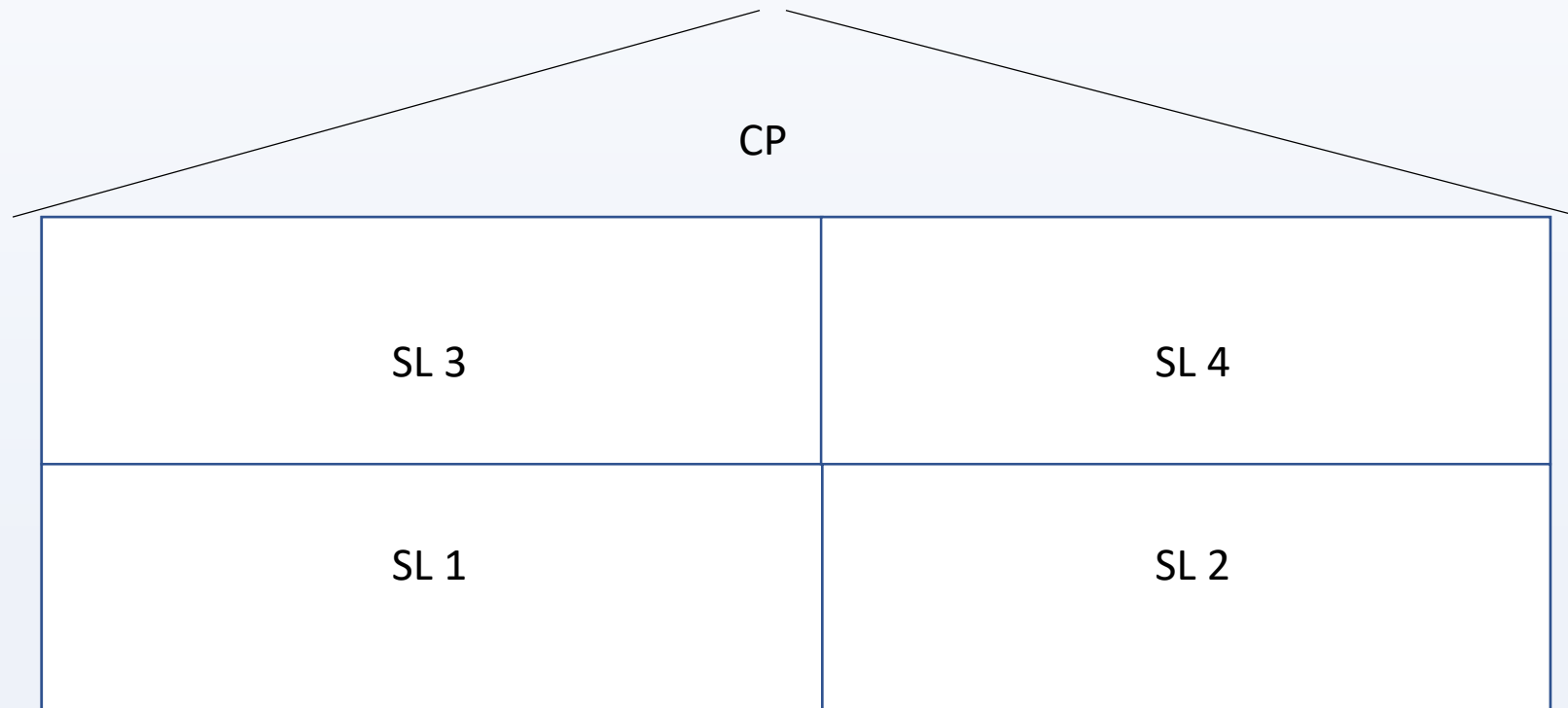


Where does a Strata Lot end and the Common Property Begin?

- The SPA defines common property in section 1
- Strata lot boundaries are defined in s. 68
- **Always** look at the registered strata plan, and not the unfiled draft version from the disclosure statement

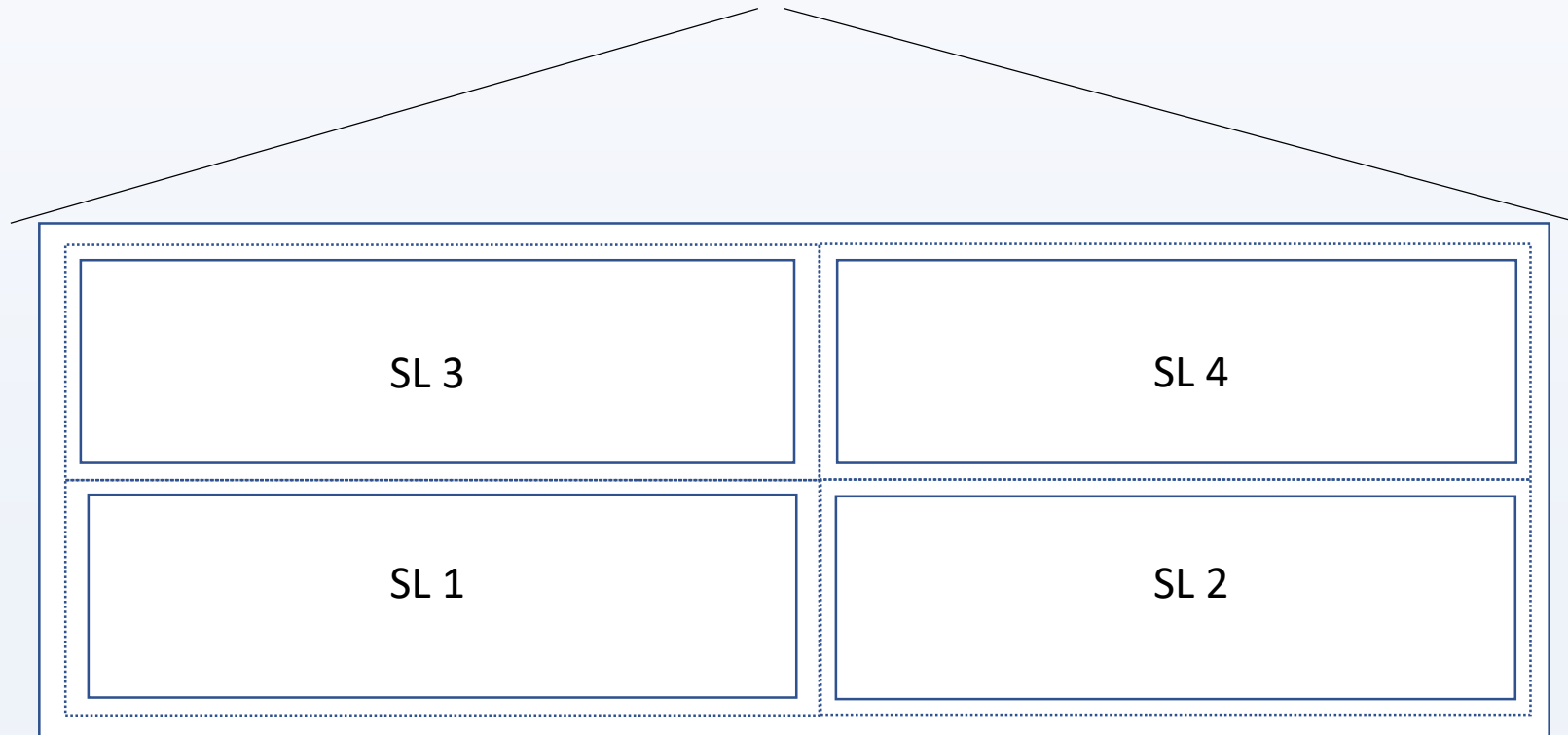


Strata Lot Boundaries



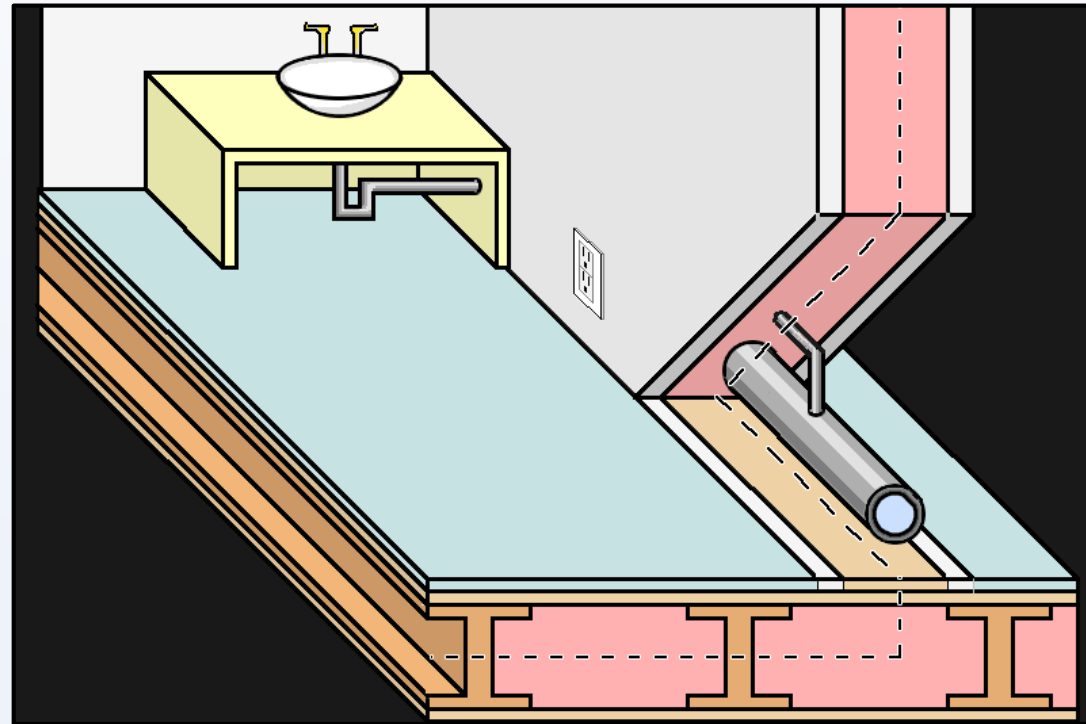


Strata Lot Boundaries





Strata Lot Boundaries





Duty to Insure and Insurance Deductibles

- The strata corporation has a legal duty to obtain and maintain insurance (s. 149)
 - Common property
 - Common assets
 - Buildings shown on strata plan
 - Fixtures built or installed by owner developer
 - "fixtures" = items attached to a building, including floor and wall coverings and electrical and plumbing fixtures, but does not include, if they can be removed without damage to the building, refrigerators, stoves, dishwashers, microwaves, washers, dryers or other items (SPA Reg. s. 9.1)



Duty to Insure and Insurance Deductibles

Section 158

- The payment of an insurance deductible in respect of a claim on the strata corporation's insurance is a common expense to be contributed to by means of strata fees calculated in accordance with section 99 (2) or 100 (1).
- The strata corporation can sue an owner in order to recover the deductible portion of an insurance claim if the owner is responsible for the loss or damage that gave rise to the claim.



Standard of Repair

- The strata corporation's duty to repair under s. 72 of the standard bylaws is measured on a standard of "reasonableness".
- John Campbell Law Corp. v. Owners, Strata Plan 1350
 - Mixed residential commercial strata corporation
 - Sewer pipe became blocked by a tree root in area just before it met the City's sewer line
 - Problem tree belongs to neighbour.
 - Sewer back up damaged ground floor commercial strata lot.



Meaning of “responsible”

- *Wawanesa Mutual Ins. Co. v. Keiran*
 - Pipe burst inside a bedroom wall (internal wall). No common property damage.
 - Deductible - \$10,000
 - Damage to strata lot - \$3,787.80



Meaning of “responsible”

- *Wawanesa Mutual Ins. Co. v. Keiran*

*As I have noted, because the damage occurred within the unit and not to common property, this is a situation where the homeowner had the duty to repair and maintain and is therefore “responsible for the loss”, regardless of the absence of fault or negligence on their part. In this sense, the matter may be viewed as if there were no strata corporation involved. **Whether the repairs were paid as part of the deductible under the policy, or otherwise, they relate to damage for which in my view, under the Act and bylaws, the owner is responsible.***



Recap

- The source or cause of damage does not determine who is responsible for fixing damage.
- The source does determine who fixes the problem that leads to damage.
- Who is responsible for repairs is determined by the bylaws.
- The fact that a water leak originates from common property does not automatically make the strata corporation responsible for resultant strata lot damage.
- An owner is responsible for repairing the damage to their strata lot (except those portions of the strata lot the strata corporation is responsible for repairing and maintaining under the bylaws).



If the damage is above the deductible

- Insurance money must be used without delay to repair or replace the damaged property unless the strata corporation has a 3/4 vote within 60 days to decide not to replace or repair damaged property after receiving insurance proceeds paid on a claim in respect of the damaged property.
- The strata may pay the deductible from the CRF (without requiring a vote of approval by owners) or by special levy (without requiring a vote of approval by owners). This allows the strata corporation to quickly obtain insurance payouts to repair and replace common property and other assets.
- A strata may sue an owner to recover the strata corporation's insurance deductible, if the owner is responsible for the loss or damage that gave rise to the claim.



Thank you!

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