
Condo Smarts

Headline: Subdivision or liquidation

Topic: Common Property, Winding Up

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Dear Tony: Our strata corporation negotiated the sale of a section of our common property with the Ministry of Highways for a highway improvement project. They approached us with an offer for the unused common land that was reasonable. The owners voted by 3/4 vote to accept the offer, but we are now having complications with the Land Title Registry. There appears to be confusion over whether this is a liquidation of the strata or a simple subdivision of common property. Not all of our owners agree, 88% of the owners voted in favour of the proposal. Can you help clarify this and possibly provide some direction?

SDL

Dear SDL: I doubt I have ever come across a "simple" subdivision of common property. The strata corporation is certainly permitted to do this but the requirements are very high as the subdivision may have an impact on the value of each strata lot. Therefore it may affect each home owner and each interest holder, including the banks and other lenders who hold mortgages.

The resolution is actually irrelevant in this case because the form that must be filed by the strata corporation at the Land Title Office, permitting the subdivision, must be signed by every owner registered on title and any interest/charge holder and/or mortgage provider.

The other part of your scenario is determining what is a reasonable value? Depending on the commercial use, future intended use of the property and the effect on other properties, the proposed subdivided property may have a much higher value.

Unlike the sale of a strata corporation where there is the possibility of multiple potential purchasers your

strata corporation is negotiating with one potential buyer, the Province of BC.

In this case there are 2 conditions the strata may want to negotiate, both to be paid by the Ministry: first, that the strata retain an independent commercial property appraiser and second, legal representation to assist the strata. Further, the strata may want to negotiate that the Ministry also pay other associated costs such as any costs relating to the subdivision and the filing of the required documents in the Land Title Registry.

If a strata corporation is considering winding up you will want to ensure your property is marketed showing its greatest potential and therefore getting the best price for owners to consider. The strata corporation will also want, under the instruction of independent of legal advice, to engage an independent commercial broker to act as their exclusive agent and to market the property as wide as possible. Once the offers come in, the lawyer and council review the proposals, terms and conditions and consider when it is time for an info meeting so the owners can ask questions and determine if this is a direction they are interested in. There may still be room to negotiate and counter offer if the notice for wind up has been set up properly. This is a good way to manage legal costs and services and does not require any commitment by the strata owners up to this point.