

Legislative Update: Winding Up A Strata Corporation

On July 28, 2016 the *Strata Property Act* was amended to allow strata owners to wind-up the strata corporation by an 80% vote of all eligible voters instead of the previous unanimous vote requirement.

For convenience, each section, in its entirety, has been provided and the relevant changes underlined.

This information is provided for notification purposes only. It is recommended that these legislative updates be printed on coloured paper and inserted into your hard copy of the SPA. For the current version of the SPA and Regulations please refer to the CHOA web site (www.choa.bc.ca) which links to BC Laws.

Part 1 — Definitions and Interpretation

"80% vote" means a vote in favour of a resolution by at least 80% of the votes of all the eligible voters;

"winding-up resolution" means a resolution referred to in

(a) section 272 (1) [vote to cancel strata plan and become tenants in common], or

(b) section 277 (1) [appointment of liquidator].

Part 4 — Strata Corporation Governance

Special general meeting called by voters

43 (1) Persons holding at least 20% of the strata corporation's votes may, by written demand, require that the strata corporation hold a special general meeting to consider a resolution or other matter specified in the demand.

(2) The demand must be signed by each of the persons making it.

(3) Subject to subsection (3.1) and section 44, the strata corporation must hold the special general meeting within 4 weeks after the demand is given to the strata corporation.

(3.1) If the demand requires the strata corporation to hold a special general meeting to consider a winding-up resolution, the strata corporation must hold the meeting within 8 weeks after the demand is given to the strata corporation.

(4) The president of the council may call the special general meeting without holding a council meeting.

(5) At the special general meeting, the resolution or any other matter specified in the demand is the first item on the agenda and must be dealt with before consideration of any other matter about which notice has been given.

(6) If a special general meeting is not held within the time period set out in [subsection \(3\) or \(3.1\), as applicable](#), the persons making the demand may themselves hold a special general meeting by complying with the provisions of this Act, the regulations and the bylaws respecting the calling and holding of special general meetings.

Notice requirements for annual or special general meeting

45 (1) [Subject to subsection \(1.1\), the strata corporation](#) must give at least 2 weeks' written notice of an annual or special general meeting to all of the following:

(a) every owner, whether or not a notice must also be sent to the owner's mortgagee or tenant;

(b) every mortgagee who has given the strata corporation a Mortgagee's Request for Notification under section 60;

(c) every tenant who has been assigned a landlord's right to vote under section 147 or 148, if the strata corporation has received notice of the assignment.

[\(1.1\) The strata corporation must give at least 4 weeks' written notice under subsection \(1\) of an annual or special general meeting at which a winding-up resolution will be considered.](#)

(2) [Subject to subsection \(2.1\), a person](#) who has a right to be notified under this section may, in writing, waive the right and may, in writing, revoke a waiver.

[\(2.1\) A waiver under subsection \(2\) has no effect in relation to the right to be notified of an annual or special general meeting at which a winding-up resolution will be considered.](#)

(3) The notice of the annual or special general meeting must include a description of the matters that will be voted on at the meeting, including the proposed wording of any resolution requiring [a 3/4 vote, 80% vote or unanimous vote](#).

(4) If the meeting is an annual general meeting, the notice must include the budget and financial statement referred to in section 103.

(5) A vote at an annual or special general meeting may proceed despite the lack of notice as required by this section, if all persons entitled to receive notice waive, in writing, their right to notice.

(6) If 2 or more persons share one vote with respect to a strata lot, all of them must consent to the waiver of notice under subsection (5).

Number of votes per strata lot

- 53** (1) At an annual or special general meeting each strata lot has one vote unless different voting rights are set out in a Schedule of Voting Rights in the prescribed form in accordance with section 247, 248 or 264.
- (2) Despite subsection (1), a strata corporation may, by bylaw, provide that the vote for a strata lot may not be exercised, except on matters requiring an 80% vote or unanimous vote, if the strata corporation is entitled to register a lien against that strata lot under section 116 (1).
- (3) If, in accordance with a bylaw passed under subsection (2), a vote for a strata lot may not be exercised, the strata lot's vote must not be considered for the purposes of determining a quorum in accordance with section 48 or for the purposes of sections 43 (1), 46 (2) and 51 (3).
- (4) Despite subsection (1), if there is a tie vote at an annual or special general meeting, the president, or, if the president is absent or unable or unwilling to vote, the vice president, may, if the bylaws so provide, break the tie by casting a second, deciding vote.

Voters

- 54** (1) The following persons may vote at an annual or special general meeting:
- (a) an owner, unless a tenant or mortgagee has the right to vote under paragraph (b) or (c);
 - (b) a tenant who has been assigned a landlord's right to vote under section 147 or 148, unless a mortgagee has the right to vote under paragraph (c);
 - (c) a mortgagee of a strata lot, but only in respect of insurance, maintenance, finance or other matters affecting the security for the mortgage and only if
 - (i) the mortgage gives the mortgagee the right to vote, and
 - (ii) at least 3 days before the meeting the mortgagee has given to the strata corporation, the owner and the tenant referred to in paragraph (b), if any, written notice of the mortgagee's intention to vote.
- (2) Despite subsection (1) and any assignment or other disposition of a right to vote to a mortgagee of a strata lot,
- (a) the mortgagee may not vote on a winding-up resolution, and
 - (b) the owner of the strata lot may vote on the winding-up resolution unless a tenant has the right to vote under subsection (1) (b).

Court appointed voter

- 58** (1) If there is no person to vote in respect of a strata lot, an owner, the strata corporation or an interested person may apply to the Supreme Court for an order under subsection (2).
- (2) On application under subsection (1), the court may make an order declaring that there is no person to vote in respect of the strata lot, and appointing the Public Guardian and Trustee or any other person to vote in respect of the strata lot.
- (3) If the application concerns a matter that requires [an 80% vote or unanimous vote](#) and the court is satisfied that there is no person to vote in respect of a strata lot, the court must make an order under subsection (2).
- (4) The court may make any order it considers advisable, including an order respecting the payment of fees, to give effect to an appointment of the Public Guardian and Trustee or other person.
- (5) The court may vary an order made under this section.

Information Certificate

- 59** (1) Within one week of a request by an owner, a purchaser or a person authorized by an owner or purchaser, the strata corporation must give to the person making the request an Information Certificate in the prescribed form.
- (2) The certificate must contain the information required by subsection (3), as of the date of the certificate.
- (3) The certificate must disclose all of the following in respect of the strata corporation and the strata lot for which the request is made:
- (a) the monthly strata fees payable by the owner;
 - (b) any amount that the owner owes the strata corporation, other than an amount paid into court or to the strata corporation in trust under section 114;
 - (c) any agreements under which the owner takes responsibility for expenses relating to alterations to a strata lot, the common property or the common assets;
 - (d) any amount that the owner is obligated to pay in the future for a special levy that has already been approved and the date by which the payment is to be made;
 - (e) any amount by which the expenses of the strata corporation for the current fiscal year are expected to exceed the expenses budgeted for the fiscal year;

(f) the amount in the contingency reserve fund minus any expenditures which have already been approved but not yet taken from the fund;

(g) any amendments to the bylaws that are not yet filed in the land title office;

(h) any resolution passed by a 3/4 vote or unanimous vote that is required to be filed in the land title office but that has not yet been filed in the land title office;

(h.1) any winding-up resolution that has been passed;

(i) any notice that has been given for a resolution that has not been voted on, if the resolution requires a 3/4 vote, 80% vote or unanimous vote or deals with an amendment to the bylaws;

(j) any court proceeding, arbitration or tribunal proceeding in which the strata corporation is a party and any judgments or orders against the strata corporation;

(k) any notices or work orders received by the strata corporation that remain outstanding for the strata lot, the common property or the common assets;

(l) the number of strata lots in the strata plan that are rented;

(l.1) which parking stalls and storage lockers, if any, have been allocated to the strata lot;

(m) any other information required by the regulations.

(4) Copies of all of the following must be attached to the certificate:

(a) the rules of the strata corporation;

(b) the current budget of the strata corporation;

(c) the owner developer's Rental Disclosure Statement under section 139, if any;

(d) the most recent depreciation report, if any, obtained by the strata corporation under section 94.

(5) The information in subsection (3) disclosed in a certificate is binding on the strata corporation in its dealings with a person who relied on the certificate and acted reasonably in doing so.

(6) On application by the strata corporation, by an owner or by a person who is affected by a certificate, the Supreme Court may make any order it considers just in the circumstances to give effect to or relieve the strata corporation from some or all of the consequences of an inaccurate certificate.

(7) The strata corporation may charge, to the person requesting the certificate, a fee for the certificate of not more than the amount set out in the regulations and may refuse to issue the certificate until the fee is paid.

Part 10 — Legal Proceedings and Dispute Resolution

Appointment of administrator

- 174** (1) The strata corporation, or an owner, tenant, mortgagee or other person having an interest in a strata lot, may apply to the Supreme Court for the appointment of an administrator to exercise the powers and perform the duties of the strata corporation.
- (2) The court may appoint an administrator if, in the court's opinion, the appointment of an administrator is in the best interests of the strata corporation.
- (3) The court may
- (a) appoint the administrator for an indefinite or set period,
 - (b) set the administrator's remuneration,
 - (c) order that the administrator exercise or perform some or all of the powers and duties of the strata corporation, and
 - (d) relieve the strata corporation of some or all of its powers and duties.
- (4) The remuneration and expenses of the administrator must be paid by the strata corporation.
- (5) The administrator may delegate a power.
- (6) On application of the administrator or a person referred to in subsection (1), the court may remove or replace the administrator or vary an order under this section.
- (7) Unless the court otherwise orders, if, under this Act, a strata corporation must, before exercising a power or performing a duty, obtain approval by a resolution passed by a majority vote, 3/4 vote, 80% vote or unanimous vote, an administrator appointed under this section must not exercise that power or perform that duty unless that approval has been obtained.

Part 16 — Cancellation of Strata Plan and Winding Up of Strata Corporation

Vote to cancel strata plan and become tenants in common

- 272** (1) To apply to the registrar to cancel a strata plan and become tenants in common of
- (a) land shown on the strata plan,
 - (b) land held in the name of or on behalf of the strata corporation, but not shown on the strata plan, and
 - (c) personal property held by or on behalf of the strata corporation,

a resolution must be passed by an 80% vote at an annual or special general meeting.

(2) The resolution must approve all of the following:

- (a) the cancellation of the strata plan;
- (b) the dissolution of the strata corporation;
- (c) the conversion schedule referred to in section 273;
- (d) the conversion of each owner's interest, in the owner's strata lot and in the common property and common assets of the strata corporation, to an interest as a tenant in common in the shares set out in the conversion schedule in
 - (i) land that was shown on the strata plan immediately before it was cancelled,
 - (ii) land held in the name of or on behalf of the strata corporation, but not shown on the strata plan, and
 - (iii) personal property held by or on behalf of the strata corporation.

Confirmation by court of winding-up resolution

273.1 (1) A strata corporation that passes a winding-up resolution in accordance with section 272

- (a) may apply to the Supreme Court for an order confirming the resolution, and
- (b) must do so, if the strata plan has 5 or more strata lots, within 60 days after the resolution is passed.

(2) For certainty, the failure of a strata corporation to comply with subsection (1) (b) does not prevent the strata corporation from applying under subsection (1) (a) or affect the validity of a winding-up resolution.

(3) A record required by the Supreme Court Civil Rules to be served on a person who may be affected by the order sought under subsection (1) must, without limiting that requirement, be served on the owners and registered charge holders identified in the conversion schedule.

(4) On application by a strata corporation under subsection (1), the court may make an order confirming the winding-up resolution.

(5) In determining whether to make an order under subsection (4), the court must consider

- (a) the best interests of the owners, and
- (b) the probability and extent, if the winding-up resolution is confirmed or not confirmed, of

- (i) significant unfairness to one or more
 - (A) owners, or
 - (B) holders of registered charges against land shown on the strata plan or land held in the name of or on behalf of the strata corporation, but not shown on the strata plan, and
- (ii) significant confusion and uncertainty in the affairs of the strata corporation or of the owners.

Application to registrar

274 To cancel a strata plan under section 272, an application, in a form satisfactory to the registrar, must be made to the registrar accompanied by

- (a) the conversion schedule,
- (b) if the strata plan has 5 or more strata lots,
 - (i) a court order under section 273.1, and
 - (ii) a Certificate of Strata Corporation in the prescribed form stating that
 - (A) the winding-up resolution under section 272 (1) has been passed and the conversion schedule conforms to the resolution, and
 - (B) the strata corporation has no debts other than debts held by holders of registered charges against land shown on the strata plan or land held in the name of or on behalf of the strata corporation, but not shown on the strata plan,
- (c) if the strata plan has fewer than 5 strata lots, either the documents required by paragraph (b) or both of the following documents:
 - (i) the written consent to the winding up signed by all holders of registered charges against land shown on the strata plan or land held in the name of or on behalf of the strata corporation, but not shown on the strata plan;
 - (ii) a Certificate of Strata Corporation in the prescribed form stating that
 - (A) the winding-up resolution under section 272 (1) has been passed and the conversion schedule conforms to the resolution, and
 - (B) the strata corporation has no debts other than debts held by persons who have consented in writing, under subparagraph (i), to the winding up of the strata corporation,
- (d) a reference plan, in a form required under the *Land Title Act* , that shows

- (i) the land shown on the strata plan, and
 - (ii) the land held in the name of or on behalf of the strata corporation, but not shown on the strata plan, and
- (e) any document required by the registrar
- (i) to resolve the priority of interests of any registered charges against the land shown on the strata plan or held in the name of or on behalf of the strata corporation, but not shown on the strata plan, or
 - (ii) to transfer title.

Registrar's order

275 (1) If the registrar is satisfied that the requirements of section 274 are met, the registrar may order that

- (a) the strata plan is cancelled, and
- (b) land that was shown on the strata plan or held in the name of or on behalf of the strata corporation, but not shown on the strata plan, vests in the owners as tenants in common in the shares set out in the conversion schedule.

(1.1) For the purposes of subsection (1) and section 100 of the *Land Title Act*, an application under section 274 of this Act that is accompanied by the records required by that section is conclusively deemed to be an application that meets the requirements of section 100 (4) (a) of the *Land Title Act*.

(2) An order of the registrar

- (a) may be made on terms the registrar considers necessary,
- (b) may be made conditional on the creation, enlargement, extension, cancellation or registration of any interest that the registrar considers necessary to give effect to a term of the order, and
- (c) may be made without a hearing.

(3) When the order is made, the registrar must

- (a) file the order,
- (b) register indefeasible titles to the land referred to in the order in accordance with the order, and
- (c) give a copy of the order to each owner and registered charge holder shown on the conversion schedule by sending it by registered mail to the address shown on that schedule.

- (4) When the order is filed
- (a) the strata corporation is dissolved,
 - (b) the owners are owners, as tenants in common, of
 - (i) the land in accordance with the titles registered by the registrar, and
 - (ii) the personal property in shares equal to their shares of the land as set out in the conversion schedule,
 - (c) any encumbrances against each strata lot and the common property are claims against the interest of each owner in the land and interests appurtenant to the land in the strata plan, and have the same priority they had before the registrar's order,
 - (d) all claims against the property created after the deposit of the strata plan, other than the encumbrances mentioned in paragraph (c), are extinguished, and
 - (e) owners are jointly and individually liable for the debts of the strata corporation to the creditors who do not have claims against the property of the strata corporation.

Appointment of liquidator

- 277** (1) To appoint a liquidator to wind up the strata corporation, a resolution to cancel the strata plan and appoint a liquidator must be passed by [an 80% vote](#) at an annual or special general meeting.
- (2) A liquidator must have the qualifications of a liquidator that are required by the [Business Corporations Act](#) .
- (3) The resolution must give the name and address of the liquidator and approve all of the following:
- (a) the cancellation of the strata plan;
 - (b) the dissolution of the strata corporation;
 - (c) the surrender to the liquidator of each owner's interest in
 - (i) land shown on the strata plan,
 - (ii) land held in the name of or on behalf of the strata corporation, but not shown on the strata plan, and
 - (iii) personal property held by or on behalf of the strata corporation;
 - (d) an estimate of the costs of winding up;
 - (e) the interest schedule referred to in section 278.

Confirmation by court of winding-up resolution

- 278.1 (1) A strata corporation that passes a winding-up resolution in accordance with section 277, if the strata plan has 5 or more strata lots,
- (a) may apply to the Supreme Court for an order confirming the resolution, and
 - (b) must do so within 60 days after the resolution is passed.
- (2) For certainty, the failure of a strata corporation to comply with subsection (1) (b) does not prevent the strata corporation from applying under subsection (1) (a) or affect the validity of a winding-up resolution.
- (3) A record required by the Supreme Court Civil Rules to be served on a person who may be affected by the order sought under subsection (1) must, without limiting that requirement, be served on the owners and registered charge holders identified in the interest schedule.
- (4) On application by a strata corporation under subsection (1), the court may make an order confirming the winding-up resolution.
- (5) In determining whether to make an order under subsection (4), the court must consider
- (a) the best interests of the owners, and
 - (b) the probability and extent, if the winding-up resolution is confirmed or not confirmed, of
 - (i) significant unfairness to one or more
 - (A) owners,
 - (B) holders of registered charges against land shown on the strata plan or land held in the name of or on behalf of the strata corporation, but not shown on the strata plan, or
 - (C) other creditors, and
 - (ii) significant confusion and uncertainty in the affairs of the strata corporation or of the owners.

Vesting order

- 279 (1) Within 30 days of being appointed, the liquidator must apply to the Supreme Court for an order confirming the appointment of the liquidator and vesting in the liquidator**
- (a) land shown on the strata plan,**

(b) land held in the name of or on behalf of the strata corporation, but not shown on the strata plan, and

(c) personal property held by or on behalf of the strata corporation

for the purpose of selling the land and personal property and distributing the proceeds as set out in the interest schedule.

(2) The court may grant the order if satisfied that

(a) the requirements of section 277 have been met, and

(b) if the strata plan has 5 or more strata lots, the winding-up resolution under section 277 has been confirmed by an order of the court under section 278.1.

(3) For the purposes of subsection (1), the liquidator is appointed on the date the winding-up resolution under section 277

(a) is passed, if the strata plan has fewer than 5 strata lots, or

(b) is confirmed by an order under section 278.1, in any other case.

Application for court order to wind up strata corporation

284 (1) An owner, a mortgagee of a strata lot or any other person the Supreme Court considers appropriate may apply to the Supreme Court for an order winding up the strata corporation.

(2) On application by a person referred to in subsection (1), the court may make an order appointing a liquidator to wind up the strata corporation.

(3) In determining whether to make an order under subsection (2), the court must consider

(a) the best interests of the owners, and

(b) the probability and extent, if the liquidator is appointed or not appointed, of

(i) significant unfairness to one or more

(A) owners,

(B) holders of registered charges against land shown on the strata plan or land held in the name of or on behalf of the strata corporation, but not shown on the strata plan, or

(C) other creditors, and

(ii) significant confusion and uncertainty in the affairs of the strata corporation or of the owners.