

Headline: How simple is liquidation of a strata corporation?

Topic: Buying & Selling

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Liquidation is a dramatic step for a strata corporation and a community of owners, many of whom have probably lived there for 25+ years. The risks of failing to get the best price and terms, over paying on commissions, or terms that benefit the buyer and not the strata is very high, so it is essential for the follow some basic steps of decision making. There are two basic factors that affect a liquidation from the owners' perspective: value of the property and the condition of the property which can be assessed with the help of a depreciation report. The information in the depreciation report may influence the owners decision to maintain versus liquidate; however, all strata corporations must remember that until they have voted to liquidate, they must maintain and repair the common property and common assets.

There are many decisions that the strata council and owners will have to consider as they proceed through the liquidation process, such as the value of repairs compared to the proposed buy out, and the costs for legal, commissions, the liquidator, court applications and the negotiation of contracts and agents agreements.

Values differ for every project based on land use and location. A project sale that may yield only the current assessment value could be a prudent decision if each owner is facing a \$100,000 special levy for repairs, whereas a development in great condition may not consider a sale unless they can see a 200-300% increase in value. Real estate value still comes down to the same basic issues, location and demand.

In the fall of 2015, the *Strata Property Act* was amended, lowering the voting requirement for liquidation from 100% to 80% of the schedule of voting rights. The amendments are not in force until the regulations have been adopted by government. Even

though the change is significant, obtaining 80% of the total number of votes will be difficult to achieve and will require an application to the Supreme Court of BC to approve the decision as part of the legislative amendment.

There are two methods of selling the property. Option 1: A developer or speculator purchases all of the units directly from each owner. The strata is not involved in the liquidation process and the deal is fairly clean. Option 2: A strata corporation votes by 80% vote. The principal advantage of this option is it gives the strata owners the collective ability, the same as a land assembly, to market their property for competitive bidding and obtain the best price.

Condo owners are entitled to the best price and the best terms for their property before they consider selling. To reach this objective, a logical process is helpful for the strata corporation to follow. They begin with a general meeting of the owners to direct the council to investigate selling the property. The strata owners by majority vote will instruct the council to start the process and to retain an independent lawyer who will act solely for the strata throughout the process. The strata council will next review proposals from a number of commercial brokers who will market the property, with negotiable fees generally from 1-2% of the total sale. Think in real dollars. A 2% commission on a \$40 million dollar offer is an \$800,000 dollar commission. Avoid dual agency agreements. This is a substantial transaction and your commercial broker should be serving only your interests.

Once the strata council has completed a legal review of the contract and retained a broker, the broker proceeds with marketing the property. Developers and land speculators will be invited to assess the property, and submit offers. The offers may take into consideration

location, expanded development opportunity, transit and community access, neighbouring developments and amenities, plus the overall potential for the site. This phase usually takes 3-6 months.

property is available in the region is just as critical. CHOA provides an on site information service for strata corporations that are considering liquidation. Contact tony@choa.bc.ca for more information.

When the broker finalizes a short list of generally 3-5 of the highest offers the strata council and their lawyer will meet to review the offers, perhaps counter offer and will consider the terms and conditions of the offer. When the details are clear the final offer is tentatively agreed upon subject to the approval of the owners at a general meeting.

Once the final offer is approved in principle the complicated work begins. Around months 6-12 the final negotiation of the purchase conditions and price are completed and the strata's lawyer will prepare the 80% vote resolution that authorizes the liquidation, authorizes the court application to ratify the decision, and to appoint a liquidator. The liquidator will be responsible for the receipt of the money from the developer, the cancellation of each of your titles into one parcel of land, and the payout to each owner, their share of the proceeds after any charges on their property.

The resolution that the owners will vote on and the sequencing of the events is the most critical part of the transaction. You can easily expect a resolution that is 20-30 pages in length because the resolution must include all of the terms and conditions of the contracts, agreements, court applications, liquidation procedures and transfer of funds. One quirk of the liquidation process is owners who require their proceeds to make another purchase will have to wait until the job of the liquidator is complete before they can shop for a new home. Only when the liquidation process is complete do the owners receive their money, once any such as mortgages on their property are cleared. To provide time for owners to move and relocate, the strata may want to negotiate 60-120 days of occupancy after the completion of the liquidation, as part of the contract.

If everything goes well, plan on 12-18 months. The success depends on a number of information meetings and constant communication with your owners to prepare them for the vote and the emotional liquidation of their community. If you hope to have any success on your proposed liquidation, don't forget the owners have to find a new place to live once the deal is complete. Before you vote, an information meeting with the owners to help them understand what other