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BRITISH COLUMBIA
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STRATA PROPERTY LAW PROJECT—PHASE TWO

Backgrounder

Report on Terminating a Strata

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INTRODUCTION

The British Columbia Law Institute began work on the Strata Property Law Project—Phase Two in summer 2013. The phase-two project builds on the consultation and research carried out in phase one of the project. It addresses legislative reform of the *Strata Property Act*. With the goal of promoting the development of the next generation of the act, the project's purpose is to make recommendations in the following seven areas: (1) fundamental changes to a strata; (2) complex stratas; (3) leasehold stratas; (4) common property; (5) selected governance issues; (6) selected insurance issues; (7) selected land-title issues.

The *Report on Terminating a Strata* addresses one aspect of the first area. It concerns what the *Strata Property Act* calls cancellation of a strata plan and winding up of a strata corporation, which the report labels, for simplicity's sake, termination of a strata. Termination can be considered the end of life for a strata—the ultimate fundamental change. The timing is right to consider termination, as the earliest stratas created in British Columbia, which date to the 1960s, may soon be encountering difficult choices over repairs, renewal, or termination.

The report presents the project's final recommendations for reform of the law on terminating a strata. These recommendations set out the policy positions that are proposed to guide this area of the law. These policy proposals are illustrated by draft legislation, which is found in a schedule to the report. The policy proposals and draft legislation do not have the force of law. The passage of legislation by the legislative assembly is needed to fully implement the recommendations made in the report.

OUR SUPPORTERS

The Strata Property Law Project—Phase Two has been made possible by project funding from the Real Estate Foundation of British Columbia, the Notary Foundation of British Columbia, the Ministry of Natural Gas Development and Responsible for Housing for British Columbia, the Real Estate Council of British Columbia, the Real Estate Institute of British

Columbia, Strata Property Agents of British Columbia, the Association of British Columbia Land Surveyors, the Vancouver Island Strata Owners Association, and the Condominium Home Owners Association.

THE STRATA PROPERTY LAW (PHASE TWO) PROJECT COMMITTEE

BCLI is carrying out the Strata Property Law Project—Phase Two with the assistance of an all-volunteer project committee. The members of the project committee are:

Patrick Williams—chair
(Partner, Clark Wilson LLP)

Veronica Barlee (Jul. 2014–present)
(Senior Policy Advisor, Housing Policy Branch, Ministry of Natural Gas Development and Responsible for Housing)

Larry Buttress
(Deputy Executive Officer, Real Estate Council of British Columbia)

Garth Cambrey
(President, Cambrey Consulting Ltd.)

Tony Gioventu
(Executive Director, Condominium Home Owners Association)

Tim Jowett
(Deputy Registrar of Land Titles, Land Title and Survey Authority)

Judith Matheson
(Realtor, Coldwell Banker Premier Realty)

Elaine McCormack
(Associate Counsel, Alexander Holburn Beaudin Lang LLP)

Doug Page (Oct. 2013–Jul. 2014)
(Manager, Housing Policy, Office of Housing and Construction Standards, Ministry of Natural Gas Development and Responsible for Housing)

David Parkin
(Assistant City Surveyor, City of Vancouver)

Allen Regan
(Vice-President, Bayside Property Services Ltd.)

Stanley Rule
(Lawyer, Sabey Rule LLP)

Sandy Wagner
(President of the Board of Directors, Vancouver Island Strata Owners Association)

Ed Wilson
(Partner, Lawson Lundell LLP)

CONSULTATION PAPER ON TERMINATING A STRATA

The report was preceded by the committee's *Consultation Paper on Terminating a Strata*, which was published in May 2014. The consultation paper was distributed widely, and a sizable number of people and organizations responded to the committee's request for comment on its proposals. The committee thanks all those respondents. Their comments played an important role in the committee's deliberations on the recommendations in the report, especially in relation to protecting the rights of dissenting owners and registered

chargeholders, where they inspired the committee to refine some of its tentative recommendations from the consultation paper.

BACKGROUND ON TERMINATING A STRATA

Introduction

The report contains two chapters setting out the background to the law on terminating a strata. One chapter describes the development of the law in British Columbia; the other provides a brief survey of how other jurisdictions in Canada, Australia, the United States, and Asia approach termination. But the report begins with a short overview of the main issues at play in terminating a strata.

An Overview of the Issues

There are many reasons that may drive a strata to seek termination. For example, a strata may be motivated to terminate if the strata building requires extensive repairs or renewal, which may strain the financial means of strata-lot owners. Termination may also seem like an attractive option if the land the strata sits on could be rezoned to enable higher-density development.

Both of these situations crop up relatively rarely in British Columbia, but the first, in particular, may occur with increasing frequency in the near future. This is because the first wave of strata buildings in British Columbia are entering the sixth decade of their existence, a time when major building components may begin to fail.

The *Strata Property Act* borrows a number of corporate-law procedures to facilitate the termination of a strata. But its procedures may only be initiated with the unanimous consent of strata-lot owners. If this demanding standard cannot be met, then an application to the Supreme Court of British Columbia becomes the only option to move the process forward.

Development of the Law in British Columbia

The report discusses how termination of a strata has evolved in British Columbia from the first strata-property statute enacted in the 1960s to the present day. Legislative provisions on terminating a strata originated in rules that applied when a strata building was destroyed due to a catastrophic event. The act allowed for the extension of these rules by a legal fiction: strata-lot owners could “deem” their strata to be destroyed, even though the building had suffered no physical damage.

This approach persisted until the development of the *Strata Property Act* in the 1990s. With the enactment of that act, the legislation began to address termination directly. The act provides three procedures for terminating a strata: (1) voluntary winding up without a liquidator; (2) voluntary winding up with a liquidator; and (3) court-ordered winding up. These procedures are modelled on equivalent procedures for for-profit companies. But in a distinctive nod to real-property law, stratas were obliged to obtain the unanimous consent

of strata-lot owners to use the two voluntary procedures. There is also extensive court oversight of the process, which especially comes into play if a strata cannot reach the unanimous-consent threshold.

The Law in Other Jurisdictions

The report examines how other jurisdictions approach termination issues. It shows that British Columbia's legislation is distinctive in Canadian terms in requiring unanimous consent and in the level of court oversight. A few other Canadian jurisdictions adopt unanimous consent as their threshold for terminating a strata, but most other provinces and territories allow for their procedures to be engaged upon the approval of a supermajority of owners.

The report also examines how a few international jurisdictions have sought to reform their laws on terminating a strata.

SUMMARY OF THE COMMITTEE'S RECOMMENDATIONS

Introduction

The report makes 21 recommendations for reform of the *Strata Property Act's* approach to terminating a strata, which have been grouped into the following four areas: (1) general reform and voting threshold; (2) voting and procedural issues; (3) protecting the interests of dissenting owners and registered chargeholders; and (4) transitional and other issues.

General Reform and Voting Threshold

This chapter of the report begins by grappling with the basic question of whether the time is right to reform the act's termination provisions. Although those provisions are little used today, they may be called upon more frequently as strata buildings age. The committee recommends tackling reforms before problems arise, rather than in the midst of those problems.

Next, the report considers arguments for and against maintaining the voting threshold for authorizing termination at unanimity. While this threshold provides the strongest protection for individual property rights, it creates the possibility that a large majority of owners could be thwarted by the demands of a small minority group. When this occurs, it may be left to the courts to deal with an intractable dispute. In the committee's view, a supermajority threshold, requiring at least 80 percent support from eligible votes, would strike a better balance.

This chapter concludes by examining ideas for incorporating legislative flexibility into setting the voting threshold. One way to achieve this flexibility would be to allow stratas to set for themselves a higher threshold; another would be for the legislation to create different thresholds for different kinds of stratas. The committee viewed these ideas as interesting, but was not prepared to add to the complexity of the act by endorsing them.

Voting and Procedural Issues

The committee's recommendation to adopt a different voting threshold for terminating a strata effectively creates a new type of resolution. This chapter is concerned with examining a number of gaps that could arise as a result of creating a new resolution and with making recommendations to ensure that this resolution fits seamlessly into the structure of the *Strata Property Act*.

The chapter begins by defining the key phrase *eligible vote* by reference to a strata's Schedule of Voting Rights, or, if it doesn't have one, to the rule of one vote per strata lot. The committee recommends an extended notice period for meetings considering a resolution to terminate, which would be set at 30 days. Votes on this type of resolution should be calculated on the same total-votes basis as is used for resolutions requiring passage by a unanimous vote. This approach means that calculating votes on a resolution to authorize termination would not employ the method used for calculating votes on a resolution to be passed by a majority or a 3/4 vote, thus avoiding the danger that a comparative small number of voters could authorize termination by virtue of finding themselves in an 80-percent majority at a general meeting. Finally, the committee recommends that a strata-lot owner should have the right to vote on a resolution authorizing termination, even if the owner is in arrears of certain fees or charges or if the owner's mortgagee ordinarily has the right to exercise the vote attached to the strata lot.

Protecting the Interests of Dissenting Owners and Registered Chargeholders

The two procedures for terminating a strata that do not involve an application to court require the consent of all strata-lot owners and (when the strata is proceeding without the appointment of a liquidator) all holders of registered charges in respect of the strata. Moving to different thresholds for approving termination raises the question of how best to protect the interests of dissenting owners and registered chargeholders.

The chapter begins by examining the role of the courts in protecting dissenting owners' interests. Throughout this project, the committee has wrestled with the idea of creating a special court procedure—or alternative-dispute-resolution procedure—for dissenting owners. In the consultation paper, the committee did not tentatively recommend the creation of a special procedure. Instead, it proposed leaving the matter to the act's existing court procedure for preventing or remedying unfair acts as the means to provide protection for dissenting owners.

After considering the responses to the consultation paper, the committee had a change of heart on this issue. In the report, the committee recommends that a role for court oversight be created for the two consensual procedures for terminating a strata. As a result, in most cases, both a voluntary winding up of a strata corporation without a liquidator and a voluntary winding up with a liquidator would require a strata corporation to apply to court for an order authorizing termination. (A strata with fewer than five strata lots would be entitled to waive this requirement.) In the committee's view, these recommendations strike

the best balance between the desire to streamline the process and the need to address situations in which strata-lot owners may feel that termination would cause them undue harm.

Regarding registered chargeholders' interests, in the consultation paper, the committee proposed ending the current requirement for obtaining the consent of all registered chargeholders and replacing it with a notice requirement. After considering the responses to the consultation paper, the committee has decided to alter its approach to this issue. It continues to recommend that the act not require registered chargeholders' consent to termination. But the committee recommends that registered chargeholders be served with the petition in the court application to authorize termination without a liquidator and that they have standing in that proceeding.

Transitional and Other Issues

The report concludes by examining two issues.

First, it considers the appropriate transitional rule for the committee's recommendations. Some legislation does not apply to litigation, contracts, or other arrangements in place before the legislation comes into force. In the committee's view, this transitional rule is not appropriate for its recommendations, as it would lead to a very long period before those recommendations could begin to be consistently applied. The recommendations should apply to all stratas, once they are implemented.

Second, the committee confirms that its recommendations are meant to apply to bare-land strata plans. This recommendation is included to ensure that there are no doubts on this point.

CONCLUSION

The committee believes that the recommendations contained in the report will help to address emerging issues in the strata-property field and will leave British Columbia with a modernized and streamlined legislative framework for terminating a strata. The committee calls on the legislative assembly to enact legislation to implement its recommendations.