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LAW INSTITUTE

## STRATA PROPERTY LAW PROJECT—PHASE TWO

### Backgrounder

## Questions and Answers on the Report on Terminating a Strata

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### What is terminating a strata?

Terminating a strata is the process by which land and buildings forming a strata property are withdrawn from the legal framework of the *Strata Property Act*. It results in a strata plan being cancelled, a strata corporation being wound up, and the individual owners of strata lots becoming collective owners, as common-law tenants in common, of the former strata land and buildings. It can be thought of as the end of life for a strata.

### Why would a strata want to terminate?

Stratas can terminate for any reason. Termination is rare in British Columbia, but people tend to agree that it's likely to become more common as strata buildings age. It's generally thought that strata-lot owners could make the decision to terminate when a strata is facing comprehensive, costly repairs to renew or upgrade a strata building. Some stratas could decide to terminate if the owners believe that the underlying land is more valuable if it is sold off for redevelopment.

### How does the Strata Property Act currently deal with termination?

The *Strata Property Act* has three procedures for terminating a strata, which generally mirror procedures for winding up a for-profit corporation. These procedures are (1) a voluntary winding up without the appointment of a liquidator, (2) a voluntary winding up with the appointment of a liquidator, and (3) a court-ordered winding up. The two voluntary procedures require the unanimous agreement of strata-lot owners to termination. And the first voluntary procedure (where a strata is proceeding without the appointment of a liquidator) requires the unanimous agreement of all holders of registered charges on strata land (this group would include, for example, mortgagees of a strata lot and people who have easements or rights of way across land in the strata plan).

## **What are the concerns about the act's current approach?**

The main concern is that the act's unanimous-consent requirement sets too high a hurdle for stratas to clear. Decisions about termination are typically going to be made in very difficult circumstances. The current law effectively gives every owner in a strata a veto over the decision. (If those objecting owners only amount to less than five percent of the strata's voting power, then the strata can ask a court to override their veto.) As it is never easy to get a group of any size to all agree on one course of action, this approach raises the specter of stratas becoming deadlocked as the value and condition of their strata deteriorates.

## **What are the major changes the report is recommending?**

The report recommends moving from a unanimous-consent threshold to a supermajority threshold for invoking the two voluntary termination procedures. This supermajority threshold would be set at 80 percent of eligible voters. (Since the act defines *voters* in the vast majority of cases to mean *strata-lot owners*, this new requirement would mean that at least 80 percent of *all* the owners in a strata would need to pass a resolution in favour of termination for the process to proceed. The threshold would only be reached at 80 percent of the total votes in the strata, which is not necessarily the same 80 percent of the voters who vote in the meeting. This means that votes on this resolution would be calculated in a manner similar to votes on a resolution passed by a unanimous vote—and not according to the rules that apply to resolutions passed by a majority vote or a 3/4 vote.)

The report also recommends that, after the strata obtains this new resolution approved by an 80-percent vote, it would have to apply to court and ask the court for an order authorizing termination as being in the best interests of the strata.

And the report recommends that, if the strata is proceeding without a liquidator, then the strata should no longer be required to obtain the consent of all registered chargeholders to liquidation. But registered chargeholders would have standing in the subsequent court application to authorize termination, where they could raise any concerns they have with the judge.

## **Why is the report recommending these changes?**

The changes would give British Columbia a more streamlined and well-balanced procedure for terminating a strata. A supermajority threshold set at 80 percent of owners would reduce the potential for deadlock while at the same time ensuring that the decision to terminate is supported by a strong majority. The requirement for court approval would give dissenting owners and registered chargeholders an opportunity to make their case that termination is really not in the best interests of the strata. Placing this requirement on the strata would reduce the prospect that a vulnerable owner who disagreed with termination would—by virtue of the cost of civil litigation—be denied the chance to make a case before the court.

### **What else does the report recommend changing?**

The report contains 21 recommendations. The bulk of these recommendations are meant to ensure that notice and procedural requirements for obtaining a resolution passed by an 80-percent vote fit seamlessly with the act's existing rules and procedures.

### **Which stratas would these changes apply to?**

Once the recommended changes come into force they would apply to all stratas, whether they are created before or after the date on which the changes come into force.

One specific exception would be given to very small stratas. If a strata has fewer than five strata lots, and the strata passes a resolution to terminate, then it would not be required to apply to court for an order authorizing termination.

### **When do the report's recommendations become the law?**

As an independent law-reform agency, the British Columbia Law Institute can't make changes to the law. The report's recommendations have been made public and have been sent to the responsible government ministry. They can only be implemented by the passage of a bill by the Legislative Assembly of British Columbia.