

NO STRATA SUPERMAJORITY NEEDED TO HIRE REALTOR, B.C. SUPREME COURT CONFIRMS

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The B.C. Supreme Court recently confirmed that a strata council only needs a simple majority of owners to authorize the council to hire a realtor to solicit offers for the sale of the strata building.

In [Buckerfield v. The Owners of Strata Plan VR 92, 2018 BCSC 839](#), the court dismissed the minority owners' petition which sought to require the support of 75 to 80 percent of owners before the strata council could retain a realtor. The court determined the supermajority requirement would impose an unnecessary and cumbersome procedural threshold before a strata council could take the first step in the process of winding-up the strata.

The Strata Wind-Up Process

Effective July 28, 2016, the *Strata Property Act* was amended to ease the sale of strata complexes by reducing the unanimous consent provisions for winding-up and terminating a strata corporation to 80 percent consent to appoint a liquidator to wind up the strata corporation. Sections 276 through 285 of the *Strata Property Act* specify the procedures to wind up the strata corporation, including court approval of the appointment of the liquidator. The sale of the strata complex by the liquidator must be approved by a supermajority of three-quarters of the owners.

Simple Majority Sufficient to Retain Realtor

In 2017 the strata council for a building known as Granville West started to receive interest from realtors about listing the building for sale. The South Granville neighbourhood has been the subject of potential development interest as a result of the expected construction of the Broadway SkyTrain route.

Following an informal ballot where 58 percent of the owners supported retaining a realtor to solicit offers for the sale of the building, the fourteen owners opposed to hiring a realtor brought their petition to court arguing that the strata council failed to act in accordance with the *Strata Property Act* by engaging a realtor without a supermajority of at least 75 to 80 percent of owners' support.

The minority owners asked the court to exercise its inherent jurisdiction and powers under sections 164 and 165

of the *Strata Property Act*^[1] to declare that a supermajority of at least three-quarters of owners vote in favour of retaining a realtor before the strata council can do so. The court declined to do so, finding that the retaining of a realtor did not amount to an alteration or change in use of the common property or the disposal of land by the strata, those being situations which do engage the supermajority requirements of the *Strata Property Act*.

The court held that the wind-up provisions in the *Strata Property Act* sufficiently protected the owners, in particular the requirement that 80 percent of owners must approve the appointment of a liquidator prior to the court approving any such appointment.^[2] The supermajority requirement sought by the minority owners was not in keeping with the recent amendments to the *Strata Property Act* intended to make it easier for strata corporations to voluntarily wind-up.

In the end, the court declined to impose an additional preliminary requirement on strata councils seeking to test the market for the sale of their building. Requiring support of at least three-quarters of owners to simply retain a realtor would be premature and overly interventionist in the eyes of the court, particularly since a vote on whether to sell the building may not even be necessary if a reasonable offer could not be obtained.

Strata councils may now proceed with confidence to retain realtors to solicit offers where they have the support of a simple majority of owners.

by Vicki Tickle, Daniel Shouldice and Damon Chisholm

[1] Section 164 of the *Strata Property Act* grants the court the authority to make any interim or final order necessary to prevent or remedy unfair acts. Section 165 grants the court the authority to order the strata corporation to stop contravening the *Strata Property Act* and/or perform its statutory duties.[ps2id id='1' target='']

[2] Sections 277 and 278.1 of the *Strata Property Act*.[ps2id id='2' target='']

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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