OWNERS AND DEVELOPERS TAKE NOTE: CHANGES TO BC'S STRATA PROPERTY ACT COMING SOON

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In November 2015, the province amended certain portions of the *Strata Property Act*[1] that govern how strata corporations dissolve. Once in force, these amendments should make it easier for strata corporations to dissolve and to redevelop their underlying real property; however, the changes raise questions about how the new dissolution procedures will work in practice.

Issues Under the Current Regime

Strata corporations that wish to dissolve currently have three options: (1) voluntary winding up without a receiver, (2) voluntary winding up with a receiver, or (3) winding up by court order. Voluntary dissolution without a receiver is an attractive option, since it does not involve the time and expense of appointing (and paying for) a receiver or going to court. However, strata corporations should give careful consideration to the benefits of appointing a receiver, given the significant number of administrative matters that need to be addressed when dissolving as described further below.

All voluntary dissolutions under the current version of the Act, with or without a receiver, must be approved by a unanimous vote of the owners of the strata corporation. After receiving unanimous approval, the strata corporation must apply to the registrar of titles under the Land Title Act, who then oversees the dissolution. This application must be accompanied by the written consent of all holders of registered charges against the land shown on the strata plan, as well as a certificate of the strata corporation, a reference plan and such other documents as required by the registrar to resolve priorities and transfer title. If such a voluntary dissolution cannot be obtained, the only other recourse is an application to the British Columbia Supreme Court for an order to wind-up the strata corporation.

This procedure can present problems for strata corporations who wish to dissolve. If the strata's unanimous consent cannot be obtained, the only recourse available is to the Supreme Court. Jurisprudence suggests that unanimity is often very difficult to obtain, often owing to one or more recalcitrant holdouts. Deadlock will typically ensue, because the majority of the owners desiring the dissolution will often refuse to approve necessary capital expenditures to the strata property. All owners can thus suffer a precipitous decline in the

value of their units if the deadlock lasts and the common property falls into disrepair.

Upcoming Amendments

The newly enacted amendments will eliminate the requirement of a unanimous vote for voluntary winding-up, without or without a receiver. Instead, the voting requirement will be reduced to 80%, which is in line with similar condominium legislation in other Canadian jurisdictions. However, the amendments will also add a number of new procedures for winding-up:

1. **Court Oversight**—Any strata corporation of 5 or more units seeking to wind-up must first obtain a court order approving the winding-up. This is to ensure that owners who did not vote for the winding-up resolution have the opportunity to have their concerns weighed against the factors in favour of redevelopment.
2. **Extended Notice and Meetings**—A strata corporation seeking to wind-up must give four weeks' notice of any meeting where a winding-up resolution will be considered. Also, if the owners demand a special meeting to consider a winding-up resolution, this special meeting must be held within eight weeks after the demand has been given to the strata corporation.
3. **Eligibility to Vote**—A mortgagee is not eligible to vote on winding-up resolutions. However, strata corporations cannot restrict an owner's right to vote on a winding-up resolution, regardless of any provisions in the bylaws.
4. **Dealing with Holders of Registered Charges**—Once the strata corporation has obtained a court order, the application to the registrar no longer requires the unanimous consent of all holders of registered charges in most circumstances. Instead, the strata corporation only needs to provide a copy of the court order and a certificate that confirms that: (a) the winding-up resolution has been passed, and (b) the strata corporation has no debts other than the debts held by holders of registered charges. However, for stratas of less than 5 units that do not obtain a court order approving the winding-up resolution, the strata corporation must obtain the consent of all holders of registered charges before winding-up. The effect after cancellation of the strata plan on holders of registered charges remains unchanged: the encumbrances become claims against the interest of each owner in the land and have the same priority they had before the registrar's order. However, the registrar can only cancel a strata plan if the priorities of all registered charges have been resolved to the satisfaction of the registrar.

Implications

These amendments are welcome news to owners of aging strata units and property developers alike, because the changes give owners a (potentially) more efficient means of unlocking the value of the underlying land. However, strata owners and developers should proceed carefully since this is an untested regime and a

number of uncertain issues remain, including:

1. **Court Approach is Unknown**—The amendments require the court to consider three factors when approving dissolution of a strata corporation: (a) the best interests of the owners; (b) the probability and extent, if the winding-up resolution is confirmed or not confirmed that (i) significant unfairness will result to the owners, the holders of registered charges, or other creditors; and (ii) significant confusion or uncertainty in the affairs of the strata corporation or of the owners. It is not clear how the Supreme Court will interpret or weigh these factors in the context of a dissolution and sale, and the amendments do not provide much guidance. The courts will have greater involvement under the new dissolution regime and we expect the development of new case law clarifying the many nuances of the test.
2. S**ale Procedures**—The amendments are silent on how property owners will affect the sale of the property once the strata corporation is dissolved. After dissolution of the corporation, former owners will hold the property as tenants in common. If not carefully considered in advance, owners who are opposed to the winding-up of the strata corporation could attempt to oppose the sale of the property, because land transfer forms must be signed by all tenants in common. In practice, any prospective sale will almost certainly coincide with the application to the court for winding-up, as the proposed redevelopment plan will be needed to establish that the winding-up is in the best interests of the owners.

We anticipate that the courts will be called upon to interpret and clarify the finer points of these amendments once in force. In the meantime, strata corporations and developers may wish to consider the impact of these changes and seek advice on how the new amendments will impact their property development decisions moving forward.

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1. SBC 1998, c 43 ("Act").[ps2id id='1' target='/]

A Cautionary Note