

# Winding up a Strata corporation - legal precedent

## Strata Termination Update #521

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A year ago in Legally Speaking No. 509, I described two Supreme Court of British Columbia cases that addressed whether a strata corporation must first pass an 80% vote (sometimes called a "winding-up resolution") before strata council may list the whole complex for sale with a brokerage or enter a contract to sell the entire development to a buyer. The British Columbia Court of Appeal has now confirmed that there is no such requirement.<sup>1</sup> The eligible voters may decide by majority vote to authorize strata council to list the complex with a brokerage and later contract to sell the project to a purchaser, subject to the owners passing a winding-up resolution and meeting all other pre-requisites.

### Background

While reasons for terminating a strata development vary, two grounds are especially common. First, as a strata complex ages, it may need so much remedial work that it makes more sense to sell the project to a developer for redevelopment. Alternatively, if a strata project is located in an area rezoned for higher density development, the owners may prefer to profit by selling the property to a developer, who will maximize its potential.

The Strata Property Act creates three termination methods. In the first two methods, owners choose to terminate by passing an 80% vote to approve a winding-up resolution, either to terminate without a liquidator (called a "Division 1 wind up") or with one (a "Division 2 wind up"). An 80% vote is a vote in favour of a resolution by at least 80% of the votes of all of the eligible voters.<sup>2</sup> In most cases, after passing the 80% vote, the strata corporation must then ask the Supreme Court of British Columbia to confirm the winding-up resolution, giving any dissenting owner the opportunity to further object. In the third method (a "Division 3 wind up"), the Court orders the strata to terminate, typically because the strata corporation is too dysfunctional to continue; there is no winding-up resolution.<sup>3</sup>

Each termination method results in winding up the strata corporation and cancelling the strata plan. The relevant land is ultimately sold, and any personal property formerly belonging to the strata corporation converted to cash. Everyone who was formerly the owner of a strata lot will receive their proportionate share of the sale proceeds, after deducting any amounts due to the owner's respective mortgage lenders or other secured creditors.

## Case Law

In *Buckerfield v. Strata Plan VR 92*, some REALTORS® initially asked strata council about selling the entire 41 unit complex.<sup>4</sup> Strata council then organized a presentation to explain the termination process to the owners. In an informal poll, a majority of owners voted to hire a real estate brokerage to market the complex to developers for redevelopment, all subject to later passing a winding-up resolution. When strata council announced its plan to retain a brokerage on this basis, several dissenting owners sued the strata corporation in the Supreme Court of British Columbia. The dissenters apparently asked for a declaration that the strata corporation must first pass an 80% vote and appoint a liquidator, who would then be the only person with authority to list the complex for sale. Alternatively, the dissenters claimed that the eligible voters must first pass a 3/4 vote before strata council can retain a brokerage to solicit offers on the building. The Supreme Court disagreed, dismissing the dissenters' objections and refusing to require an 80% vote, or a 3/4 vote, to engage a brokerage.

On appeal, the British Columbia Court of Appeal observed that the Strata Property Act does not expressly impose any requirement for an 80% vote before listing a strata complex for sale. Nor does the Act imply any such requirement.

The Court of Appeal confirmed that a strata corporation may decide by majority vote at a general meeting to engage a brokerage to list the whole development for sale, so long as the listing contract, and presumably any subsequent contract of purchase and sale, is subject to the owners later passing an 80% vote to wind up the strata corporation and cancel the strata plan and, where required, confirmation by the Supreme Court of British Columbia. There is no requirement to first have a liquidator in place to list the complex with a brokerage.

The termination of a strata development is a complex legal event. If a strata council approaches a REALTOR® to list the whole complex in a strata termination, the REALTOR® should warn strata council to retain a strata lawyer as soon as possible to guide the strata corporation through the procedure. Any REALTOR® interested in listing a strata development for termination will also profit by learning more about the process. Read the Buckerfield case above, or any or all of these other recent termination cases below:

[Strata Plan VR1966 \(Re\), 2017 BCSC 1661](#)

[Strata Plan VR2122 v. Wake, 2017 BCSC 2386 varied 2018 BCCA 280](#)

[Strata Plan VR2702 \(Re\), 2018 BCSC 390](#)

[Strata Plan NWS837 v. Padua, 2018 BCSC 564](#)

1. Buckerfield v. Strata Plan VR 92, 2019 BCCA 196 aff'g 2018 BCSC 839. See also 2018 BCCA 243, interim injunction denied pending appeal.
2. Strata Property Act, s. 1(1) (definition of "80% vote.")
3. Strata Plan VR2122 v. Wake, 2018 BCCA 280 at para. 64; Buchanan v. S.P. VR 1411, 2008 BCSC 977.
4. Buckerfield v. Strata Plan VR 92, supra, note 1.