

Condo Smarts November 22nd-25th, 2017

Subdivision or Liquidation?

Dear Tony: Our strata corporation negotiated a section of our common property with the Ministry of Highways for a highway improvement project. They approached us with an offer for the unused common land that was reasonable. The owners voted by 3 / 4 vote to accept the offer, but we are having complications with the Land Title Registry. There appears to be confusion over whether this is a liquidation of the strata or a simple subdivision of common property. While not all owners agree, 88% of the owners did vote in favour of the proposal. Can you help clarify this and possibly provide some direction? SDL

Dear SDL: I doubt I have ever come across a "simple" subdivision of common property. The strata corporation is certainly permitted to do this but the requirements are very high because the subdivision may have an impact on the value of each strata lot affecting each home owner and each interest holder, specifically the banks and lenders who hold mortgages. The resolution is actually irrelevant in this case as the form for the subdivision must be filed by the strata corporation must be signed by every owner registered on title and any interest/charge holder, the mortgage provider. The other part of your scenario is determining what is a reasonable value? Depending on the commercial use, future intended use of the property and the affect on other properties, the proposed subdivided property may have a much higher value. Unlike the sale of a strata corporation where there is an 80% vote to wind up the strata corporation, you are negotiating with only one potential buyer, the Province of BC. In this circumstance there are 2 conditions the strata may impose as part of the contract. That the strata retain an independent commercial property appraiser and legal representation to assist the strata. The strata agree only on the condition that the Ministry will pay for these costs and any costs relating to the subdivision and the filing of the required documents in the Land Title Registry.

If a strata corporation is considering winding up you want to ensure your property is marketed showing its greatest potential and bring the best price to your owners for consideration. The strata corporation, under the instruction of independent of legal advice, engage an independent commercial broker to act as their exclusive agent and to market the property as wide as possible. Once the offers come in, the lawyer and council review the proposals, terms and conditions and consider when it is time for an info meeting so the owners can ask questions and determine if this is a direction they are interested in. There may still be room to negotiate and counter offer if the notice for wind up has been set up properly. This is a good way to manage legal costs and services and does not require any commitment by the strata owners up to this point.

Sincerely,

Tony Gioventu, Executive Director
Condominium Home Owners' Association (CHOA)
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