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The End of the Line

The Termination of a Condominium Corporation

As condominium buildings age and land values continue to escalate, some condominium corporations are now considering the possibility of selling all the units and common elements of their condominium site when approached by condo developers with an agreement of purchase and sale.

This is an opportunity for unit owners who face ongoing special assessments in aging properties to realize often higher than market value prices from developers who are often willing to pay those higher prices.

Although developers are free to negotiate the purchase of individual units with each unit owner with the objective of eventually purchasing all the units in a condominium corporation, this process would likely be more time-consuming, and a developer may

not necessarily be successful in acquiring all the units.

The most common approach taken by developers in purchasing an existing condominium site is with the purchase of the entire property under Section 124 of the *Condominium Act* (the “Act”), where the board of directors of a condominium corporation will proceed with obtaining the requisite votes from the unit owners to proceed with the sale.

Preliminary Steps

Firstly, if considering an offer from a developer, it is important to get feedback from the unit owners to determine whether there is any interest. Section 124 of the Act requires that 80% of the unit owners agree to the sale, so it is vital to determine whether that would be achievable before taking any further steps.

The Agreement of Purchase and Sale from the Developer

Once the board determines interest from the owners, the board can consider entering into a “conditional” Agreement of Purchase of Sale once reviewed by the corporation’s legal counsel. The Agreement must be conditional on the corporation obtaining the requisite voting and consent requirements under Section 124. The board may want to consider asking the developer to pay the costs of the lawyer’s review of the Agreement and the costs relating to the calling and holding of the meeting to vote on the sale.

Section 124 – The Process and Voting/Consent

The board must call an owners’ meeting for voting to authorize the sale of the property. This can be a special owners’

meeting or added to the agenda of another owners' meeting, such as the annual general meeting.

To authorize the sale of the property, 80 percent of the units must vote in favour of the sale. In addition, consent is required from 80 percent of those having registered claims against the property as of the date of the meeting. The consents can be obtained after the meeting date.

The Owners Who Vote "No" to the Sale

Section 125 of the Act provides that once the 80 percent vote is achieved, a dissenting owner may, within 30 days of the vote, submit to mediation of a dispute over the property's fair market value. The process to be followed for the mediation is in accordance with Section 132 of the Act.

The dissenting owner must give the corporation notice of intention to dispute within 10 days after the vote authorizing the sale.

The owner who serves this notice of intention is entitled to receive from the proceeds of the sale –the amount the owner would have received if the sale price had been fair market value as determined by arbitration.

If the corporation does not have the funds that the owner is entitled to from the sale proceeds, the corporation is still required to pay that amount to the owner who served the notice of intention to the deficiency (meaning all owners pay from their shares of the proceeds).

It is important to note that there is no mechanism under the Act for an owner

to dispute the actual sale. The process under Section 125 is only with respect to the sale price.

What Happens to the Sale Proceeds?

The Agreement of Purchase and Sale will usually provide for the payment of one sum on the closing date, which would be distributed to the owners in accordance with the proportionate share of the common element interest set out in the Schedule to the Declaration, which sets out each unit's common expense proportion and common element proportionate share (usually Schedule D). Sometimes the proportion share of common expenses and common element interest are the same – but sometimes, they may differ. It is essential to check this Schedule and bring it to the owners' attention at the time of the vote to approve the sale.

Section 127(2) The Process of Termination of the Condominium

Section 127 outlines the process for terminating the condominium corporation and the condominium plan. The registration on the title of the Notice of Termination does this.

Section 129 Distribution of Assets – the Reserve Fund

When the condominium corporation is terminated, all assets will be used to pay all claims against the corporation. The remainder will be paid to owners in the same proportions as their proportionate share of common interest.

Unless the Agreement of Purchase and Sale provides otherwise, any balance in the Reserve Fund on termination will then be distributed to the owners.

Other Ways to Terminate a Condominium Corporation

The *Condominium Act* provides other ways to terminate a condominium corporation other than where there is a sale. There may be instances, for example, where there is one owner of all the units who no longer wants to operate the property as a condominium corporation. Or perhaps owners would rather operate as a co-ownership rather than a condominium (this poses many challenges). There may also be situations where there is substantial damage to the condominium, and the owners no longer want to proceed with the condominium structure. The *Condominium Act* sets out the mechanism for other termination procedures, including by court order, under Sections 122, 123 and 128 of the Act.

It may be that we start seeing more condominiums that are approaching the forty-year-old mark begin the sale process, given that developers are looking for properties in locations with a lack of development sites. Ultimately, this is a win-win for not just the condominium developers but for owners who may walk away with a great return on their investments. ■

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