

What happens when some condo owners want to sell the whole building and others don't?

Selling an entire strata building

There are many different scenarios in which real property is owned jointly by two or more people. Examples can be as disparate as the shared ownership of a small family cabin all the way up to the joint ownership of a multi-unit residential development. While there are obvious benefits to co-ownership, there can also be disadvantages. One of the more significant detriments to co-ownership is when there is a dispute among the owners about whether or not to sell the property. If the owners cannot reach unanimous agreement on what to do, the only way to break the deadlock is to resort to the courts.

This is expected to become a Canada-wide trend as more co-owners in aging condominium buildings consider selling the entire building rather than continue with ever-increasing maintenance costs.

In cases like this, the Partition of Property Act ("PPA") provides the court with authority to "direct a sale of the property and a distribution of the proceeds." To prevent a sale, it must be established that there is "good reason" and that a sale "would not do justice between the parties." The onus of showing this is on the party opposing the sale. The courts have a broad and unfettered discretion in considering these issues.

Two recent cases involving co-ownership of multi-unit residential complexes illustrate opposite results under the PPA.

Case No. 1

The first case is Cypress Gardens. Cypress Gardens is a common law condo development in North Vancouver consisting of 177 units owned by 135 different owners. Each was a "co-owner" of the entire complex and owned an undivided fractional interest in the whole property. All owners had agreements with the governing council providing them with exclusive use of their own unit. Some owners applied to have the property sold to a developer. A majority of the other owners opposed.

The court noted that the facts and circumstances of each case must be examined to determine whether good reason existed to refuse a sale. There is no general rule circumscribing the types of reasons that justify refusing to order a sale. Those reasons can include "serious hardship" and lack of "good faith" as well as the appearance of "vexatiousness or maliciousness" by an applicant. Here, the court found that a sale would "force particularly vulnerable people out of their homes, including young children, single parents, the elderly, the infirm and people of very limited financial means." Many could not afford comparable property nearby and would be forced to rent or move away.

Ultimately, the court found there was a rea-

sonable understanding among all owners that they were buying individual homes and not simply fractional interests in a larger complex. All this amounted to "good reason" not to order a sale.

Case No. 2

The second case is *McRae vs. Seymour Estates*. Like Cypress Gardens, this case involved a common law condominium in North Vancouver. Seymour Estates comprised 114 units in eight buildings on 6.5 acres of land. There were 114 different co-owners, each with an undivided fractional interest in the whole. Seymour Estates was over 40 years old and the repair and maintenance costs were gradually escalating.

As in Cypress Gardens, a group of the unit owners wished to sell the property to a developer who

was prepared to pay a premium for the whole property. A sale would relieve the owners from having to invest increasing amounts of money in the coming years to repair and upgrade the buildings.

However, unlike in Cypress Gardens, these owners did a lot more work organizing before they went to court. They spent a long time lobbying support among their co-owners and presented a compelling economic case for a sale. They held town-hall meetings to discuss the issue and to disseminate information in a transparent way. In the end, they managed to get the support of over 90 per cent of the owners to support the sale.

Once they had this support, they commenced a petition seeking a court order authorizing the sale of Seymour Estates. The owners who opposed the sale raised many of the same arguments that had prevailed in Cypress Gardens. However, in this case, the court granted an order authorizing the sale of Seymour Estates as a whole.

The primary difference in the outcome was that the overwhelming majority of Seymour Estates owners were in favour of a sale. When comparing the relative hardships of a forced sale between those who wanted to sell and those who opposed, the court found that the biggest factor in favour of a sale was the sheer number of owners who wanted it. This was enough to override the opposition and warrant a court order allowing for the sale. As the court noted, while co-ownership has many benefits, there are also some detriments, one of which is the prospect of a forced sale in appropriate circumstances.

If you find yourself tied into joint property ownership and cannot reach consensus with

your co-owners on what to do, there is recourse to the courts to have the property sold. However, you will need to be extremely well organized and able to present a compelling (even overwhelming) case in support of a sale.

It takes a lot to convince a court to order a sale that will result in people being forced from their homes against their will. You will need to

be very organized. ♦

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