

Strata Windup Frequently Asked Questions

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Q	What was it exactly that recently changed in the law applying to strata corporations?	Q	Who determines how the sale proceeds are shared amongst the owners?
A	In July, 2016, the level of owner approval required to dissolve a strata corporation and sell its property was reduced from unanimous to 80% plus court approval.	A	The Strata Property Act determines this in accordance with strict rules. Unfortunately, the specific provision of the Act is easy to misinterpret at first glance. In nearly all cases, the allocation will be on the basis of either the Schedule of Unit Entitlement (relative sizes of strata lots for strata corporations created before August, 1974) or the Schedule of Interest on Destruction (the original developer's estimate of relative values for strata corporations created between August, 1974 and 2000).
Q	Why would owners wish to windup and sell?	Q	I just completely renovated the kitchen and the bathroom in my condo unit—am I entitled to more money on a windup as a result?
A	The law was changed to offer a solution to strata owners who cannot afford to make the repairs and replacements necessary to extend the life of their building. But it is available to any strata corporation in which over 80% of owners vote in favour and, if fewer than 100% of owners vote in favour, the court confirms the vote.	A	For strata corporations created under the Strata Titles Act or the Condominium Act, the Schedule of Unit Entitlement or the Schedule of Interest Upon Destruction, as applicable, will apply to determine the formula for sharing the sale proceeds—neither of these formulas takes into account the value of upgrades to a strata lot. In addition, as the developer is typically buying the complex for redevelopment purposes, the developer will not pay more for the complex based on the alterations made to individual strata lots.
Q	What determines the value of the strata corporation's building(s)?	Q	What resolutions are required to start the process to windup and sell?
A	Typically, purchasers will be interested in re-developing. Municipal land use zoning and location are the main factors influencing its value as a development site.	A	Ideally, the process is started by hiring a lawyer and a realtor. The majority of council must approve the search for those professionals. While there is no specific approval needed to enter into contracts with either the lawyer or a realtor, the strata corporation will likely need a ¾ vote to fund legal fees, and we often recommend a majority vote resolution to hire the professionals primarily to gauge owner interest.
Q	How do we get an idea of what the value of our strata corporation might be?	Q	What is an 80% vote?
A	An estimate of that value can be obtained by hiring a professional appraiser or consulting with a real estate brokerage firm with experience selling development sites.	A	The Strata Property Act defines an 80% vote as 80% of all votes of the strata corporation—not just of those votes in attendance in-person or by-proxy at a general meeting. As a result, abstentions from voting on the 80% resolution, as well as the non-attendance of a vote at the general meeting, essentially count as “no” votes.
Q	How long does the process take?		
A	There are many variables that will affect timing, but a typical timeline from the point at which a strata council is satisfied that the owners wish to pursue the possibility of a windup and sale would be about 18 months (give or take 6 months) until the sale closes and owners receive sale proceeds.		

Q	During the windup and sale process, who is responsible to repair the common property?	Q	What happens to any funds remaining in the strata corporation's contingency reserve fund on a windup?
A	The duty to repair and maintain the common property under section 72 of the Strata Property Act remains with the strata corporation. So, even if the reason the strata corporation wants to sell is because they cannot afford to repair or replace components of their building, they will need to do those repairs to maintain the building for at least the duration of the process to the standard of reasonableness and/or the standard required under the purchase and sale agreement.	A	Once all of the strata corporation's remaining financial obligations are paid out, any funds remaining in the strata corporation (be they operating funds, contingency reserve funds or unspent special levy funds) at the time of windup will form part of the proceeds of the sale and will be distributed to the owners based on the formula for the sharing of sale proceeds.
Q	Throughout the process, what is council's role?	Q	Can I stay in my unit after closing?
A	The council will act on behalf of the strata corporation, with the assistance and advice of the professionals it hires. The council will also need to keep the owners informed of all the steps and information it receives about the sale and windup. Later, when the court application to confirm the vote is made, the council will be involved in providing the evidence necessary.	A	The strata corporation can negotiate, as part of the terms of any purchase and sale of the complex, the ability for owners to remain in their strata lots for a period of time after closing. Depending on the terms negotiated, that period may be rent-free, may be subject to an agreed rental rate or a combination of the two (say the first 3 months are rent-free, and a further period of time with an agreed rental rate).
Q	How long does it take to bring the court application to confirm the vote?	Q	What happens to my tenant after closing?
A	This is the part of the process that is most difficult to predict. You must file the application within 60 days of the meeting at which the sale and windup was approved by an 80% vote. Service of the application will typically take about a month to six weeks. Then, the hearing can be scheduled. When the hearing can be held will be determined by whether any person responds to the application and how much time it will take for everyone to speak in front of the judge. If there is no one responding, it can be done within a week or two. If there is someone that does want to respond and speak in front of the judge, it can take a few months for the hearing to be held.	A	In most cases, the terms of the purchase and sale agreement will require that tenancies must be terminated by closing and that the owner cannot continue to rent the unit after closing, even if the owner chooses to live somewhere else during the period of time that owners are permitted to remain in their strata lots after closing.
Q	What does the court consider when deciding whether or not to confirm an 80% vote resolution?	Q	My strata corporation is in the process of marketing the complex for a potential windup—does that prevent me from selling my strata lot outside of a windup?
A	<p>The court will carry out a balancing of the interests of the persons affected by a windup, including looking at the following:</p> <ul style="list-style-type: none"> • The best interests of the owners • The probability and extent of any significant unfairness to an owner or charge-holder if the windup is confirmed or not confirmed by the court • The probability and extent of significant confusion and uncertainty in the affairs of the strata corporation if the windup is confirmed or not confirmed by the court 	A	No—the fact that a strata corporation is in the process of considering a windup, or even has voted in favour of a windup, does not mean that you cannot sell your strata lot on your own.

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