
Condo Smarts

Headline: Subdividing Common Property

Topic: Common Property

Publication / Date: Province, January 25, 2024

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Dear Tony: We live in a townhouse community in the Okanagan of 72 units. We have been approached by a developer if we would be interested in selling a half hectare near our entry to build more townhouse units in a separate strata corporation. Is this possible? Could we sell a section of our land? This could help us raise additional funds we need for our community as it is approaching 35 years with significant upgrades on the horizon.

JJW

Dear JJ: Yes, a subdivision of property is possible and permitted under the *Strata Property Act & Regulations*. There are obviously a number of levels of administration you will be required to meet before you can proceed, but this has occurred in the past for road and highway expansions, additional developments and expanded density. A change in zoning or subdivision of property will require a decision of the owners of the strata corporation by 3/4 vote at a general meeting, application for the zoning change if necessary for the higher density by the potential buyer, and a negotiation of the sale of the property on behalf of the owners and agreement for sale.

There may also be a requirement for easements to ensure your strata corporation has the right of access and delivery of utilities and services you currently enjoy, and the sharing of any expenses that relate to joint facilities such as a common roadway. If the subdivision affects any other interest holders, such as mortgage or utility providers, or any easements or right of ways on the proposed subdivided land, their consent may also be required.

A lawyer who has experience with both the *Strata Property Act*, real estate developments and transactions will be critical to ensure your strata owners are

independently represented. As a condition of the sale, you may require the buyer pay for all of these related costs, but your selection of legal representation, engineering and any other consulting is independent.

As your annual general meeting is coming up, this is a perfect opportunity to poll the interest by your owners, to determine if there is any interest to consider the offer, and to include legal services in your budget to assist your council and owners with negotiations. A town hall information meeting where owners may ask questions without being pressured to vote on a resolution is important. It provides everyone with time to consider the proposal, the requirements to subdivide and financial benefits and liabilities without pressure. The townhouses that face the land being proposed for the subdivision will be adversely affected by the construction, so provisions for their needs should be considered as well.