

September 25, 2014

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Attn: Kevin Zakreski

**Re: BC Law Institute Consultation Paper on Terminating a Strata Corporation**

On behalf of the Mortgage Brokers Association of BC (MBABC), I would like thank you for affording us the opportunity to make submissions concerning the BC Law Institute's (BCLI) consultation paper on terminating a strata corporation. The BCLI has produced an insightful and well analysed paper on an important subject affecting strata owners which is ripe for change. We commend you for writing a remarkably thorough report and taking a proactive approach.

By way of background, the MBABC is a 25 year old professional association which represents mortgage brokers and many private mortgage lenders in British Columbia. We estimate that in BC, mortgage brokers fund an estimated \$15 billion dollars annually. Many of our members fund private mortgages through mortgage investment corporations and mortgage syndications. In addition, we also represent mortgage investment corporations (MICs), syndicators and other private mortgage lenders who operate primarily in BC. I can confirm that in preparation for our response to your paper, we met with some of our stakeholders for a round table discussion on the elements of your proposal which directly affect mortgage lenders.

We are interested in commenting on the BCLI consultation paper as the proposal to dispense with the consent of all registered charge holders to the termination process is of concern to both mortgage lenders and brokers. These concerns would also impact the public, in that the proposed changes if implemented, would cause mortgage lenders to cease lending mortgage funds to owners of older strata units, or alternatively, would drive the cost of borrowing up for these borrowers.

As you have clearly articulated in your paper, section 274 of the *Strata Property Act* requires a strata corporation applying for a wind up without a liquidator, to file various documents with the registrar, which includes written consents from all registered charge holders. This effectively gives each charge holder a veto over the windup process. This power is possibly even greater than that of strata lots owners, who need only obtain the approval of 95% of the owners to achieve a unanimous resolution with court approval following the process under section 52.

The proposal to reduce the owner voting threshold from unanimous down to 80% to approve of a strata corporation wind up is a positive change. We believe that this will provide owners with a greater capacity to achieve termination in circumstances where it is necessary to demolish older buildings which are well beyond the point of repair. However, while our members see this an important goal, they were not in favour of the proposal to dispense with the consent of charge holders to the approval process, even if provided with notice of the proposed termination and afforded an opportunity to seek remedies in court. At the heart of the concerns of mortgage lenders and brokers is that the alteration of the property title from strata lots to a single property title with owners registered as tenants in common is likely to reduce the value of the property, and therefore the mortgaged security of lenders. While each property is unique, and there may be no predictable way to estimate the value of all property following the transformation of the property title upon strata corporation destruction, in general, a single parcel of land will have much less value than if it is divided into multiple parcels, such as strata lots which are easily transferred to another party.

The concerns of mortgage lenders and borrowers include the following:

- 1) Most mortgage lenders have a significant interest in the strata lot which can be greater than that of an owner.

In many cases mortgage lenders can have an interest in a strata lot which is far greater than that of the registered owner. The majority of mortgage lenders will lend up to 75% of the value of the strata lot, and some will even lend well in excess of that ratio. When you consider who is entitled to the equity of strata lot, you will see that many mortgage lenders have a significantly greater interest in the strata lot than the registered owner. There have been circumstances where deteriorating strata buildings which are beyond repair cause owners to abandoned their strata unit. This leaves the mortgage lender in the lurch, who must then take swift action to repair, maintain and sell the strata lot to recover mortgage funds. Mortgage lenders, therefore should be afforded protections and rights in the strata corporation termination process which are at least equal to that of the strata lot owner.

- 2) Many covenants in a mortgage agreement would be breached by the borrower if they caused an alteration of the strata lot title or devalued the strata lot.

As you must know, mortgage lenders agree to provide mortgage funding to borrowers which is secured against a specific legal title. When an owner takes action to alter that legal title or do anything to reduce the value of the property they are likely in breach of

their mortgage agreement with the lender. A strata corporation termination without the consent of mortgage lenders would therefore constitute a breach of the mortgage agreement. Lenders would have the ability to seek legal remedies, such as foreclosure against borrowers during the course of the termination process, which would complicate the process.

- 3) Mortgage lenders with no control in the strata termination process will be exposed to increased risk when lending against older strata units, and may stop lending on these units, or may only lend at significantly higher interest costs to mitigate the risk.

The MBABC discussed the BCLI proposal to eliminate the consent of charge holders in the strata corporation termination process with mortgage lenders. The mortgage lenders all expressed concern with the proposal. One lender said just learning of the BCLI proposal itself would cause him to stop lending on the security of strata units in older buildings. We believe that eliminating the current rights of mortgage lenders to veto strata corporation terminations would adversely impact the public, by reducing access to and increasing the cost of mortgage funding for strata lots in older buildings.

The MBABC considered many compromises to the BCLI proposal, including splitting the one strata lot vote between the owner and mortgage lender or lenders in proportion to their relative equity interest in the strata lot. This however, may prove to be a complicated task, which is unlikely to achieve the BCLI goals of ensuring that strata corporations can more easily terminate when they need to. Balancing the interests of owners who desire to cut their losses with a strata corporation wind up and sale to a developer with protecting the rights of other interested parties, such as mortgage lenders is obviously not an easy task. However, we would propose that the BCLI consider amending their proposal by:

- Distinguishing between mortgage lenders and other charge holders;
- Dispensing with the consent of the other charge holders to the strata corporation wind up; and
- Requiring the consent of mortgage lenders to the strata corporation wind up.

Mortgage lenders can be distinguished from other charge holders, such as holders of builders' liens, judgments or restrictive covenants, in that mortgage lenders enter into a carefully considered agreement with owners to lend funds based upon the value of and equity in the strata lot (LTV). This is a critical and primary element of any mortgage agreement. Other creditors with registered financial charges seek to secure monies owed to them against a property title only after the property owner has defaulted in some way on a financial obligation. These creditors may luck out and find a debtor with property to assist with debt recovery but this is not a consideration when the property owner enters into an initial relationship with the creditor. This rationale justifies a greater level of protection for mortgage lenders over other charge holders.

If the BCLI believes that keeping the consent requirement for mortgage lenders (but not other charge holders) will continue to unduly hamper the strata corporation termination process, then we would recommend that the strata owner threshold for approval be

reduced from 80% down to 70% or even less. The reduction of the owner voting threshold would then offset the increased control over the process retained by mortgage lenders.

I ask that you please consider the above submissions in refining your proposal for strata corporation termination. Please know that I would be happy to discuss these issues with you further.

Yours truly,  
**THE MORTGAGE BROKERS ASSOC. OF BC**

A handwritten signature in black ink, appearing to read 'S. Gale', written in a cursive style.

Samantha Gale, CEO