

STRATA WIND-UPS IN BC

WINDING UP OF A STRATA CORPORATION

In 2016, strata property law in British Columbia (BC) underwent a major shift when new legislative provisions were enacted, enabling strata corporations to apply to court to cancel a strata plan and voluntarily wind-up, pursuant to a resolution approved by at least 80% of the owners. In the current real estate market in BC, this option may be desirable, especially for older, stratified developments (multi-residential or commercial) about to incur significant structural or building envelope repair expenses. However, the issues facing a strata corporation in achieving its goal of winding up and selling its previously strata-titled property to a developer are extremely complex. Recent experience indicates that if the wind-up process is not strictly compliant with applicable legislation, the court may decline to approve it, which is costly and could set the sale back by months or years, and could even cause developers to walk away from the deal entirely. Having the right legal advisors can help achieve a swifter and more economical solution for your strata corporation.

WHY GOWLING WLG?

A strata wind-up is an excellent way to realize the economic potential of a multi-unit residential property ("strata") by leveraging the value of each strata unit in the strata as a whole to a developer that may want to develop on the strata's property. However, the wind-up process is complex, involving the intersection of real estate, condominium law ("strata property law"), and the law of restructuring. As a national leader in all three areas, Gowling WLG offers the skilled counsel needed to ensure a smooth wind-up process. We have acted on strata wind-up matters at all stages of the process for various parties involved.



REAL ESTATE

Gowling WLG is home to one of Canada's strongest multi-disciplinary real estate legal teams and has acted on some of the largest development and construction projects in Canada. Strong real estate experience is vital to the initial aspects of the strata wind-up process such as listing, bid solicitation, negotiation with potential purchasers, and finalizing an agreement of purchase and sale.



STRATA PROPERTY LAW

Gowling WLG's strata wind-up group has vast experience in strata property law, representing strata corporations, owners and property managers. We have won significant cases on various strata property issues, including short-term rentals and bylaw enforcement. In-depth knowledge of strata property law is essential to navigate the complex process of winding-up a strata corporation.



RESTRUCTURING, BANKRUPTCY & INSOLVENCY

Gowling WLG is home to accomplished insolvency, restructuring, and litigation professionals across Canada. We provide the skilled oversight you need to navigate the strict procedural requirements and careful court scrutiny to achieve a smooth liquidation process and efficient conclusion to your strata wind-up transaction.

STRATA WIND-UP: STEP BY STEP

- Owners discuss interest (townhall meeting, poll, committee, etc.) and determine to sell.
- Strata corporation's lawyers determine how sale proceeds are to be distributed.

STEP 1



- Owners authorize strata council by way of a 3/4 resolution to retain experts (lawyers, appraisers, etc.) and authorize a listing agreement.

STEP 2



- Selected real estate agent solicits bids and best bid is selected (mix of financial incentives and other perks).

STEP 3



- Purchase contract negotiated with selected developer and executed.

STEP 4



- 80% wind-up resolution is drafted and presented to the owners at an SGM.
- If 80% approval threshold is reached, then strata corporation prepares court application.

STEP 5



- Petition must be served on all owners and chargeholders.
- If Court approval is granted, then liquidator is appointed to facilitate the sale.
- Liquidator facilitates sale, pays off debts and distributes to the owners any excess assets of the strata corporation.

STEP 6



THE STRATA WIND-UP PROCESS

THE BASICS

Recent changes to the Strata Property Act ("SPA") have made it easier to wind up a strata corporation and sell a strata-titled property as a whole. Prior to these amendments, the voluntary wind up of a strata corporation required unanimous consent from all of the owners. Now, a resolution passed by at least 80% of the owners is sufficient to move ahead with the strata wind-up process.

Significant factors for owners to sell the building as a whole to a developer include a change in zoning or an increase in neighbourhood density, which makes the property attractive for developers willing to pay for the building and lands. In addition, there may be maintenance issues with the building that will require significant investment, and this means hefty special levies for owners.

It is extremely important to note that the process is highly technical with numerous steps and the SPA requires the court to oversee the process. In deciding whether to confirm a windup vote, the court will assess the interests of the parties affected, including the interests of owners who are in favour and those owners, if any, who are against the wind up of the strata corporation. Essentially, the court will ensure that there is no significant unfairness or confusion for the owners or any other stakeholder.

FOR OWNERS

Owners are typically curious about the money to be gained following a strata corporation wind-up. The answer to this question depends on whether the strata corporation was created before or after 1974 (but before 2000). Depending on the year the strata plan was filed at the Land Title Office, the Schedule of Interest on Destruction or a similar schedule like the Schedule of Unit Entitlement will determine how the sale proceeds would be shared among the owners.

The details of the final sale contract will depend on what the strata corporation is able to negotiate for the owners as a whole. The strata corporation's involvement in the process of considering a wind-up does not preclude an owner from selling his/her unit independently of the wind-up process.

It is important to note that although an owner may have recently made upgrades or renovations to their condominium, or their condominium is a better unit than others within the same building for a variety of reasons (i.e. better location, better view, etc.), this factor is not considered when assessing the sale proceeds to be allocated to an owner. Any special characteristics of a particular unit will never factor into the assessment of how money will be distributed. The only factor that matters is the Schedule of Unit Entitlement or Schedule of Interest on Destruction, whichever method is applicable based on when the strata plan was filed with the Land Title Office.

Many deals with developers allow owners the opportunity to remain living in their units for a period of time on certain terms and conditions. For investors, if an owner has tenanted the unit, it is highly likely that a term of the purchase and sale agreement will require that the tenancy be terminated prior to closing.



The entire process of winding up a strata corporation tends to be about 1-2 years depending on a variety of factors, such as when the proponents can get at least 80% of the unit owners to agree to the strata corporation wind-up, or how many dissenting owners there are. Most importantly, the key factor dictating the length of the strata corporation windup process

is how quickly the owners can come to an agreement on how and when to sell the property.

At the end of the strata corporation wind-up process, if there are any remaining funds from the contingency reserve fund after any fees and debts have been paid, the amount will be distributed to the owners in a manner that reflects the division of sale proceeds (i.e. by way of the calculation set out in the Schedule of Unit Entitlement or Schedule of Interest on Destruction, whichever method applies given when the strata plan was filed at the Land Title Office).

If an owner has any specific issues or questions about the strata corporation wind-up process they would like addressed, an owner should communicate them early to the strata council or the real estate agent.

FOR STRATA COUNCILS

The strata corporation should start by obtaining an estimate of the strata corporation's value by seeking the professional services of an appraiser. Key factors that come into consideration when assessing the value of a strata corporation are the location and current zoning of the land.

Following an appraisal, if the strata corporation wishes to pursue the wind-up process and eventual sale, it is recommended that a real estate agent and lawyer be retained early on in the process. Early good legal and real estate advice is very helpful to the overall chances of a smooth and successful wind-up. An ounce of prevention is worth a pound of cure.

To search for and hire an appraiser, lawyer, realtor or any other professional, the strata corporation must pass a majority resolution. In order to pay any professional fees in excess of \$2,000, the strata corporation must pass a 3/4 vote of the resolution.

Throughout the wind-up process, the strata council remains responsible for acting on behalf of the strata corporation and plays a key role in communicating with the owners. This may include conveying information with respect to the procedure of the sale and wind-up to the owners and ensuring that the strata corporation is provided with the appropriate professional assistance at each step. In the event of a contentious court process where owners oppose the strata corporation wind-up, the strata council will likely be required to provide evidence to a judge. As such, it is imperative that strata councils document conversations and correspondence to be able to provide the necessary evidence.

Strata councils should keep in mind that the strata corporation is required under the SPA to maintain and make repairs on the common property of the building and lands. Even if looming repairs are the reason for the strata corporation wind-up, it remains the strata corporation's responsibility to maintain and repair the common property of the building and lands.



THE TEAM TO HELP YOU SUCCEED

Gowling WLG has the right combination of expertise and experience to manage a wide variety of issues that may emerge during the windup process, from listing agreements, purchase contracts and drafting of resolutions, all the way through to the court approval and liquidation process. Our leading real estate department is backed by a litigation team who takes a creative approach to complex restructuring and insolvency challenges. We provide comprehensive solutions for strata corporations throughout the strata plan cancellation, windup and sale process.



PAULINA KAM

Partner

+1 604-801-7338
paulina.kam@gowlingwlg.com

Paulina leads the firm's strata wind-up group. With her extensive experience in residential and commercial real estate (including strata property law), she is a trusted advisor to developers, strata corporations, owners and property managers on a broad range of real estate matters, including site acquisitions, land assemblies, financings, complex master-planned developments and strata property matters.



JESSICA MA

Associate

+1 604-443-7634
jessica.ma@gowlingwlg.com

Jessica is a senior associate in the firm and assists in a broad range of real estate matters. Her practice includes commercial real estate acquisitions and dispositions, real estate development, commercial leasing, and real estate based financing. She also advises clients on strata property and general corporate commercial matters.



TONY PARK

Associate

+1 604-891-2250
tony.park@gowlingwlg.com

Tony works in the firm's real estate law group and advises clients on a variety of real estate transactions involving the acquisition, financing, development and sale of commercial, industrial and residential properties. His practice also focuses on interpreting and resolving issues pertaining to the Land Title Act and Strata Property Act.



JIMMY BURG

Associate

+1 604-443-7661
jimmy.burg@gowlingwlg.com

Jimmy's practice is focused on commercial litigation, including real estate, condominium, and construction litigation. His litigation experience helps ensure compliance with the strict procedural requirements and the court-supervised part of the process including the dissolution, liquidation, and distribution of proceeds. Jimmy is also building an environmental law specialty, and often advises on the environmental aspects of real estate transactions.