

Information About Our Experience with Strata Corporation Wind Ups



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About Lawson Lundell LLP



Lawson Lundell LLP has been recognized by *Chambers Canada* as the #1 regional law firm in the country, by *Canadian Lawyer* magazine as the #1 regional firm in British Columbia, Alberta and the North since 2010, and our lawyers and firm have received national and international recognition in numerous legal and business directories and publications, including *Business in Vancouver*, *Chambers Canada*, *The Canadian Legal Expert Directory*, *Legal 500*, *The Best Lawyers in Canada*, *Benchmark Canada*, and *Who's Who Legal*. For over 130 years, we have been one of the leading business law firms in Western Canada.

Lawson Lundell's Commercial Real Estate Group



Lawson Lundell advises on all aspects of the commercial real estate and development industry, including: the acquisition, disposition, financing, rezoning, subdivision, development, redevelopment and leasing of real property. Our lawyers are currently retained by strata councils, contractors, developers, real estate brokers, public and private institutions, institutional and private investors and government agencies who undertake a broad range of real estate projects, including commercial, industrial, institutional, residential and mixed use. We assist strata property agents and real estate brokers with the development of standard documentation and advise them on a variety of regulatory issues under the *Real Estate Services Act* and the *Strata Property Act*.

Experience with Strata Corporation Wind Ups



Carrying out a strata wind up can be beneficial for many reasons. As many older strata buildings across the province reach the end of their life cycles, these buildings and related common property may require costly capital repairs that many owners would rather not pay. Additionally, as developers search for new development opportunities, particularly in the Lower Mainland, aging strata buildings (and more specifically the land beneath them) are becoming appealing assets as many of these older strata developments were built using lower density levels than are currently achievable. However, winding up a strata corporation is a technical, complicated process, and legal advice should be sought early on in the process to help ensure a successful wind up.

Experience with Strata Corporation Wind Ups (continued)



Lawson Lundell's Strata Wind Up Group assists strata corporations, developers, strata management firms, appraisers and real estate agents in all aspects of strata corporation wind ups. We have valuable experience dealing with strata wind ups, including the first court-approved wind up in British Columbia, and can assist strata corporations, developers and real estate agents in navigating this process. We are leaders in the strata wind up field, with members of our Strata Wind Up Group having been involved in the consultation and drafting process for the changes to the wind up provisions in the *Strata Property Act*, which was adopted by the BC Government in 2015 and which came into effect in July 2016. We have been retained by over 30 strata corporations or owner groups to advise them and assist them through the strata wind up process. To date, we have completed the strata wind up process with 8 strata corporations, including with respect to Twelve Oaks, the first strata wind up conducted under the new legislation, and the recently-reported case *The Owners, Strata Plan VR2122 v Wake (Hampstead)*, 2017 BCSC 2386, which was the first substantive judicial decision approving a strata wind up in the face of legal opposition.

About Strata Corporation Wind Ups

1

Each Strata Corporation is Unique

Each strata corporation is unique in its physical condition, existing zoning, potential for rezoning, state of repairs and with a diverse group of owners. Your lawyers need to recognize this, as well as understand where you are in the "wind up" process and how we can help you achieve your goals.

2

Information Meetings

It is key that all owners as well as strata council members understand the wind up process. We often attend informational meetings with strata councils and owners to explain the process and the role of the various advisors. Ensuring correct information is provided to owners, tenants and mortgagees is a central part of the wind up process.

3

Distribution of Sale Proceeds

The process and formula for distribution of any sale proceeds is determined by the *Strata Property Act* and its predecessor legislation. Determining the applicable formula is a surprisingly complicated process that we have completed for a number of strata corporations and should be carried out early in the process.

4

Conditions in Listing Agreements and Purchase and Sale Agreements

Any listing agreement with a brokerage must address the inability of a strata corporation to force owners to sell their units before the wind up process is complete. A standard listing agreement is not appropriate. Similarly, any purchase and sale agreement must reflect the wind up approval process including both the approval by the owners and the courts, as well as the due diligence process required by the developer.

5

Sale of the Property

The timing and nature of the marketing of the property will vary from strata corporation to strata corporation depending on the circumstances. The location of the property may be such that there is only one logical buyer who is willing to pay a premium for the property (the developer who controls adjoining sites) or it may attract a wide number of potential purchasers. Strata corporations should carefully choose a real estate broker who has the ability and experience to market such a property. Appraisals from independent appraisal firms may be required at this stage or later in the court approval process.

6

Authorizing the Wind Up

The technical process of winding up a strata corporation requires strict compliance with the *Strata Property Act*. This can be a long and stressful process. The strategic decision to seek such wind up authorization before marketing of the Property or after a contract is accepted is critical. A significant workload is placed on strata council members and we can devise strategies to address that burden.

7

Rezoning

Any marketing of the property must take into account what a developer can build on the site under the existing zoning or any potential rezoning. Working with your real estate brokers and appraisers, we can advise on the current and potential rezoning, and the timing and realistic potential of any rezoning and ensure you capture your fair share of that potential. We can review and advise on the information provided by the appraisers and real estate brokers.

8

Land Title and Conveyancing Process

Having completed the first court ordered strata corporation wind up in BC, Lawson Lundell has pioneered the wind up process. Working closely with Land Title Office staff, we have developed the precedents for the wind up process as well as the required conveyancing processes. We have developed software and precedents to help expedite the process and achieve cost savings.



Our Strata Corporation Wind Up Group



Lawson Lundell's Strata Wind Up Group was developed to meet the expected needs of strata corporation clients. It is our objective to ensure that strata corporations receive only the services they require and to ensure Lawson Lundell's legal expertise is available as required, while ensuring a continuity and consistency of service. Since strata corporation wind ups require a significant amount of lawyer time, we have developed a strong team across all levels of seniority, which allows us to allocate the work at the most cost-effective level, while ensuring access to senior members of the team is always available. Brief biographies for each Group member are included below.



Edward L. Wilson

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Ed is one of BC's leading experts on strata corporations generally as well as on strata wind ups, having completed a number of strata corporation wind ups, including the first court approved wind up in BC. Ed has been an active member of a number of committees over the years proposing changes to strata property law, including advising the BC Government on changes to strata legislation over the past two decades. Ed has been an active member of the current BC Law Institute's committee that recommended changes to the *Strata Property Act* that were adopted by the BC Government in 2015 which allow for more flexible rules regarding strata wind ups. Ed has acted for the Strata Property Agents of British Columbia and the BC Real Estate Association as well as a number of strata management firms. He represents the Law Society of British Columbia on the Land Title and Survey Authority Stakeholder Advisory Committee.



Peter J. Roberts

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Peter is a litigator with a wide range of experience, practising for over 26 years in Vancouver. He has appeared before all levels of court in BC as well as other professional bodies. A significant portion of Peter's practice is focused on real estate disputes. His experience includes property law disputes, strata wind ups, insurance defense and coverage, commercial disputes and contracts. Most recently, he successfully applied to wind up and sell a strata over the opposition of legally represented strata owners. This case, *The Owners, Strata Plan VR2122 v Wake (Hampstead)*, 2017 BCSC 2386, is the first substantive judicial consideration in BC of the new strata wind up provisions of the *Strata Property Act*. Peter has had conduct of several other successful applications to wind up strata corporations for the purposes of sales to a developer, including: *Wind Up of Strata Plan NW422 (Cottonwood)*, 2016 BCSC 285, *Wind Up of Strata Plan VR140 (Twelve Oaks)*, unreported, March 27, 2017, BCSC Vcr. Reg. S 1611558, and *The Owners, Strata Plan VR365 v. So (Garden Court)*, unreported, December 11, 2017, BCSC Vcr. Reg. S-179756. Peter has also acted for 87 of 114 registered owners of a common law condominium and obtained a court order under the *Partition of Property Act* for the sale of the 6.25 acre property owned collectively by this common law residential cooperative (*McRae v. Seymour Village Management Inc.*, 2014 BCSC 714).



Bryan C. Gibbons

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Bryan is the current Chair of Lawson Lundell's Insolvency and Restructuring Group. He is the past Chair of the BC Branch (Insolvency) for the Canadian Bar Association and a past Faculty member/Presenter and current contributing author for Continuing Legal Education (BC Law Society). Bryan has acted for Canadian Banks with respect to multi-unit development projects and his practice also encompasses strata wind ups. Bryan is currently advising several strata corporations in various stages of wind up, including providing initial advice on the requirements of the *Strata Property Act* through to purchase and sale agreement negotiations with developers, the owner vote process and sale closing.



Jada Tellier

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Jada Tellier is an Associate in Lawson Lundell's Real Estate Group and assists clients with all aspects of real estate development, commercial leasing and municipal planning. Her experience includes acting for developers in connection with the acquisition and disposition of commercial property, advising owners, strata corporations and real estate agents in relation to strata wind ups, and advising tenants and landlords in retail and office leasing transactions.



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Nicholas Shon works in the Real Estate Group at Lawson Lundell and assists clients with all aspects of real estate development, commercial leasing and municipal planning. In particular, Nicholas has experience: acting for developers in connection with the acquisition and disposition of commercial properties; assisting developers in the rezoning and subdivision of development properties; and advising strata lot owners on the sale of their strata lots.





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Camille is a lawyer in the litigation and disputes group, where she focuses primarily on commercial and real estate litigation. She represents clients with respect to commercial lease disputes, claims arising out of other real estate transactions, real estate agent services and issues arising under the *Strata Property Act*. Camille has appeared before the Provincial and Supreme courts of British Columbia.



May Au

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May Au is an Associate in Lawson Lundell's Vancouver office practising in the Corporate Commercial Group. She advises corporate and individual clients on a variety of legal matters, including commercial and residential real estate transactions, mergers and acquisitions, general corporate governance and private equity financing. May was a clerk with the High Court of Hong Kong, and speaks Cantonese and Mandarin.



Jillian Sych

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Jillian Sych is a real estate paralegal in the Vancouver office of Lawson Lundell. Jillian has been with the firm since 2015, and previously from 1989 to 2004, and has over 20 years of experience working as a paralegal. Jillian works on many aspects of commercial and residential real estate transactions, including subdivisions, acquisitions, sales and strata wind ups.



Conclusion



We appreciate that it may be difficult for you to consider the qualifications of Lawson Lundell LLP as proposed counsel based on the contents of this document. If you require additional information or clarification, please do not hesitate to contact Edward L. Wilson at (604) 631.9148 or ewilson@lawsonlundell.com or Peter J. Roberts at (604) 631.9158 or proberts@lawsonlundell.com or Bryan C. Gibbons at (604) 631.6152 or bgibbons@lawsonlundell.com or any of the lawyers listed above. If you are interested in receiving information on updates related to real estate law, please visit our Real Estate Law Blog at www.lawsonlundell.com/real-estate-law-blog. You may also review our website at www.lawsonlundell.com.



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