

The Condominium Property Act & Regulation 2000

An Overview

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These materials have been prepared for general educational purposes. They do not constitute legal advice. You should consult the Condominium Property Act and Regulation and seek the appropriate professional assistance.

Overview

- 4 First Act in Canada
 - 4 First condominium in Canada
 - 4 Most recent changes
 - 4 Self-policing
 - 4 Application of the Act
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- Alberta's first *Condominium Property Act* became law in 1966 (the first such law in Canada) and was amended and expanded in 1978.
 - The first condominium plan in Canada was registered in Edmonton in December, 1967 – CDE 100, Brentwood Village Condominium Corporation.
 - On September 1, 2000 the Alberta Government passed the most recent changes to the Condominium Property Act and a new Regulation.
 - The Regulation expires September 1, 2005, which means an automatic review.
 - The Act is self-policing. It contains sections allowing the government to prosecute and the courts to impose fines for breach of the Act. However, to date, the government is not inclined to prosecute. Rather, it prefers that the

community find other ways to enforce the legislation - such as mediation, arbitration or using court for directions and damages.

- The Act applies to all condominiums - residential, commercial, recreational, industrial, bare-land, barely-blended, phased, conversions, etc. The Act affects all forms of condominium units – bare-land, apartment, bungalow, duplex, townhouse, row-house, parking stall, trailer lot, locker, boat slip, etc.

Condominium Concepts and Terms

4 What is condominium?

– property, a community and a business

4 Some common terms

– unit, common property, exclusive use areas, by-laws, condominium contributions, reserve funds, bare-land, barely blended, phased, conversions

4 The players and their views

- developer, owner, board, manager

- Condominium complexes are both a *community and a business* – involving *property*. Personal relationships and interactions are very much a part of condominium ownership – perhaps more so than any other form of property ownership. At the same time, the Board is responsible for actions that can affect the property values of all the owners. In this sense, the corporation is like a business and the Board is like the board of directors of a business, responsible for its successful operation.
- The *corporation* consists of the owners of all the units in the condominium plan. A Corporation is created when the developer registers the *condominium plan* at the Land Titles Office.
- Every condominium corporation is known by its seven-digit number assigned to it- Condominium Corporation No. 993 4567. It may also have a name, such as “Whispering Pines”. The first two digits in the seven-digit number tell you the year the condominium plan was registered.

- An elected *Board of Directors* runs every corporation. The Board is elected by (and usually from) and reports to the owners at an annual general meeting or at other extra-ordinary general meetings.
- A *unit* is the part of the property owned by the individual. The *common property* is everything in the condominium plan that is not within a unit. All the owners, according to their share of the unit factors, jointly own the common property. Owners may have the *exclusive right to use* parts of the common property, either because it is identified on the condominium plan or the Board has approved the use.
- *Unit factors* indicate an owner's share in the common property and corporation. The developer assigns the unit factors. Every condominium corporation has a total of 10,000 unit factors. Since September 1, 2000 developers and Boards 1 have to disclose the basis for setting the unit factors. The unit factors assigned to a unit affect the level of condominium contributions and voting rights.
- A corporation must have *by-laws*. All owners, and everyone occupying a unit, are bound by the by-laws. If there is a conflict between the by-laws and the Act, the Act governs. Owners can change the by-laws to suit their particular community by passing a motion to adopt the changes. A *special resolution*, requiring the approval of 75% of the owners named on the unit titles and representing not less than 7500 unit factors is required to make any changes to the by-laws. Changes are effective after the Board registers the changes at the Land Titles Office.
- A condominium corporation needs money to meet its financial obligations – paying the insurance premiums, removing the snow, cutting any grass, repairing the common property, etc. The only sources of income for a condominium corporation are money paid by the owners in their *condominium contributions*, any interest earned on investments, and, in some cases, rental income on units owned by the corporation or parking stalls on common property. An owner pays his or her share of the condominium expenses in proportion to the unit factors assigned to the unit out of the total 10,000 unit factors. Corporations can now change the formula for allocating condominium contributions if the owners pass a special resolution to amend the by-laws to include a new formula.

- ❑ *Bare-land* condominium refers to ownership of dirt. In a bare-land condominium, the unit owner owns the land within the boundaries of the unit **and** any buildings on that land. In other words, the owner is responsible for the land, the interior and the exterior of the buildings, unless the by-laws provide for “*managed property*”. Managed property refers to those parts of the units which the owners and the corporation agree by contract shall be managed and maintained by the corporation out of condominium contributions. Bare-land condominium corporations can have a lot or virtually no common property. In a *conventional* condominium, the unit owner only owns the space and parts of the building that fall within the boundaries of the unit.

- ❑ *Barely-blended, phased* and *conversions* refer to different methods that developers use to develop condominium properties. In *barely-blended* the developer starts with bare-land units and then re-divides each unit into many smaller units (often seen as apartments or townhouses or commercial space). As the developer re-divides it also creates a *common property unit* to include all the common areas that would not have existed when the original condominium plan was created. The common property unit will include pieces like hallways, elevators, entryways, landscaping, exterior walls, attics and roofs, foundations, etc. *Phased developments* are those covered by the new phasing provisions in the Act which allows a developer to build in stages, but create new common property in each stage without creating a common property unit. The Act sets out the disclosure and filing and timing requirements developers must meet and contains provisions to protect buyers in these complexes. *Conversion condominiums* are created when a developer takes an existing building, which is not a condominium, and turns it into a condominium for sale to individual owners. Warehouses and apartments are two examples.

- ❑ The *developer* is the person or company who normally owns the land, plans and develops the condominium complex and sells the units to individual owners. The developer wants to sell the units and make a profit. He or she wants a good reputation so that future complexes sell also. At the beginning, from the time the condominium plan is registered, the developer wears multiple hats – developer, unit owner, Director on the first condominium board. Over time, the developer’s roles decrease and perhaps stop altogether if he/she sells all the units.

- The *owner* is the person who holds title to or owns a unit. Owners want to protect their investment and have a good complex to live or do business in. They want minimum interference and maximum freedom to enjoy and use their units.
- The *Board* is elected by the owners to run the condominium corporation under the Act and the by-laws. Directors are most often owners themselves. As a group, the Board has to look out for the best interests of the corporation and all the owners and must abide by and enforce the Act and the by-laws. It can be a tough job with little thanks.
- The *manager* is a person or company hired by the Board to assist it in carrying out the day to day operations of the corporation.

Hierarchy of Authority in Condominiums

4 Hierarchy of authority

- Act, Regulation, plan, by-laws, direction at general meeting

4 Decision making

- the Board, the owners

- The Act supercedes any by-laws. In order of importance, the governing authorities are: Act, Regulation, condominium plan, by-laws and then directions given at a general meeting (within the authority of the Act and by-laws)
- The elected Board of Directors makes most decisions affecting the Condominium Corporation. Owners can vote on matters presented at any general meeting and on by-law changes, changes to the common property and other matters permitted under the Act and the by-laws. Therefore, an owner's most important votes are those electing the Board of Directors and those changing the by-laws.

Rights and Responsibilities of Owners

4 voting

4 access to units and common property

- 4 information – the owner’s and the corporation’s
 - 4 contributions
 - 4 participation
 - 4 maintenance
 - 4 renting
 - 4 selling
 - 4 enjoyment and use
 - 4 dispute resolution
- As a unit owner, rights and responsibilities include:
- the right and responsibility to vote in matters presented to the owners for vote
 - the right of access to common areas, subject to the bylaws
 - the right to obtain information on the management or administration of the corporation
 - the responsibility to inform themselves about the Act, the by-laws and the governance of the condominium corporation
 - the responsibility to participate in governing the condominium corporation – meaning to attend general meetings, and serve on the board or on a committee
 - the right to call the first owners’ meeting if the developer does not
 - the responsibility to maintain their own unit and any parts of the common property to which they have exclusive use
 - the responsibility to abide by the Act and the by-laws and to have their family, tenants and guests do so
 - the responsibility to pay all condominium contributions and assessments on time.
 - the responsibility to insure their unit and its contents
 - the right to use mediation, arbitration or court action to resolve disputes with the corporation, the board or other owners.
 - the right to challenge improper conduct of a developer, condominium corporation, employee of a corporation, director or other owner using a court process.
- Responsible owners should have a copy of the condominium plan, the by-laws and the Act and Regulation. Owners can get a copy of the condominium plan

and by-laws at any registry office by knowing the seven-digit condominium plan number. In addition, they should know the names of the directors and contact numbers for the directors or the condominium manager, if there is one. (all available from the Board or from Land Titles office).

- ❑ Owners should read the corporation's newsletter, the minutes of the general meetings and board meetings, if available, and the budget and financial statements.
- ❑ Owners have the right and responsibility to attend the general meetings and to vote. They should express their views and provide input to the Board when requested. They should inform themselves before they vote, rather than second guessing every decision the Board makes or wanting to be consulted on every decision the Board makes. Owners should stand for election on the Board, so that everyone learns and shares the load.
- ❑ Owners should put any complaints or concerns in writing to the board so it can follow up. They should attempt to resolve matters themselves using mediation or negotiation, rather than waiting for the Board to do it all.
- ❑ They should obtain insurance on their unit and own belongings. They should become a part of the community of the condominium complex in which they own a unit!
- ❑ Prospective buyers will expect condominium owners to have more information readily available to provide to the realtor and buyer.
- ❑ Boards must give notice to owners before entering a unit to repair common property.

Rights and Responsibilities of Corporation/Board

4 the Act, Regulation and by-laws.

4 managing, administrating and maintaining the common property

- ❑ The Board has to obey, apply and enforce the Act, Regulation and by-laws. It manages, administers and maintains the common property. The owners can pass a by-law creating monetary or other sanctions which the Board can apply

to persons who do not obey the by-laws. Corporations then use the courts to enforce the sanction, if necessary.

- Directors are elected to serve a term set out in the by-laws. The number of Directors is also set out in the by-laws. Directors are usually owners, so any decisions they make normally affect them in the same way as other owners.
- Directors must act honestly and in good faith, and declare any conflicts of interest and not vote on matters where they have a conflict.
- 2/3 of the Directors must be owners or mortgagees, unless the by-laws say otherwise.

By-laws, Insurance and Employees

4 by-laws changes

4 insurance

4 employees and contractors

- The Board oversees the process to change by-laws, which the owners need to approve by special resolution.
- Boards must insure the common property against commonly insured losses set out in the Regulation (applicable to that type of condominium) and for replacement value. The amount and type of insurance varies with each condominium corporation, depending on whether it is bare-land or conventional and what common property exists. By-laws may require the corporation to insure betterments and improvements to units. Corporations now need to obtain equipment liability insurance, liability insurance for the Directors and occupiers liability insurance.
- The Board typically hires, supervises and fires any employees or contractors, including condominium managers. Some by-laws say the owners can call an extra-ordinary general meeting to fire the manager.

Financial Matters

4 financial administration

- 4 condominium contributions
- 4 annual budgets and financial statements
- A Board must prepare an annual budget. Every Board must give a copy of the annual budget and financial statements to owners.
- As part of its financial management, the Board must now prepare financial statements using generally accepted accounting practices. It must keep all corporation funds in trust accounts in the corporation's name. It must keep reserve funds separate from operating funds and other funds (eg. managed property maintenance funds). It cannot spend money without a motion of the Board. It must invest corporation funds in investments authorized under the *Trustees Act*.
- A condominium corporation has various powers to collect unpaid condominium contributions. It can make alternate payment arrangement with the owner. It can ask the owner's mortgage company to pay the outstanding amounts and add it to the owner's mortgage. It can require the owner's tenant to pay the monthly rent to the corporation to cover the unpaid condominium contributions. It can file a caveat against the title to the unit. It can charge interest, up to 18% per year, on outstanding amounts. The corporation can also sue the owner for all outstanding contributions, interest and its full legal fees or even foreclose on the title to the unit, in extreme cases.
- The Corporation can collect from the owner all its reasonable costs of collecting condominium contributions, including its legal expenses.

Meetings, Voting, and Disclosure

- 4 general meetings
- 4 voting
- 4 disclosure
- Every corporation must hold an annual general meeting once each year and not more than 15 months after the last AGM. Owners can petition to have the Board call an extra-ordinary general meeting at any time to deal with specific business (the number of owners required to petition is set out in the by-laws).

- ❑ All meetings of the corporation – general and board – must be held in the municipality of the corporation, unless the owners vote otherwise at the AGM. If the developer does not call the first AGM in time, an owner can.
- ❑ Unanimous resolutions have been replaced with special resolutions.
- ❑ Lenders second and third in priority can now vote in some cases – after the first lender and the owner. The first lender continues to be able to exercise the right to vote instead of the owner, if the lender gives notice to the corporation.
- ❑ Neither lenders nor owners can vote if the condominium contributions are outstanding more than 30 days.
- ❑ Owners can vote on ordinary resolutions and special resolutions by using written resolutions, rather than at a meeting.
- ❑ Boards must disclose information to owners, lenders and purchasers. Under section 36, *Information Statements* the Board must provide, within 10 days of a written request, any or all of the following information: statement of contributions due and payable on a unit, particulars of law suits and unpaid judgements or written demands for money over \$5,000.00; particulars of or a copy of the management agreement and recreation agreement; copy of the budget and most recent financial statements, copy of the by-laws, copy of any minutes of general or board meetings; existence of post-tensioned cables, balance in the reserve fund, the basis for calculating the monthly condominium contributions, the unit factors and how they were set, any structural deficiencies known to the corporation, and lease or exclusive use agreements for the common property.
- ❑ The Board has 10 days to provide a copy of the insurance certificate. It has 30 days to provide owners and others a copy of the policy when requested.
- ❑ It must provide to owners a copy of the reserve fund study report, the reserve fund plan and the reserve fund annual report.
- ❑ The corporation can charge a reasonable fee for producing these documents.

Reserve Funds

- 4 capital reserve fund
- 4 reserve fund study
- Every corporation must establish a capital replacement reserve fund for major repairs and replacement, which does not occur annually, of common property and property owned by the corporation.
- Every building ages and has to be repaired or have its parts replaced from time to time. The asphalt, underground utilities or services and the landscaping age and need repairs also. Regular maintenance and appropriate major repair or replacement of the common property preserves and enhances the value of the units. As with all other expenses of the corporation, the owners must pay for the repair or replacement.
- Beginning September 1, 2000, all condominium corporations have to establish a reserve fund. The common property covered by the reserve fund and how much money is needed and when will be determined by a professional report called a reserve fund study.
- Every condominium corporation will have two years to obtain a reserve fund study and prepare a plan for funding the reserve fund. If a corporation conducted a reserve fund study in the past five years, it need only prepare the plan. Condominiums built after September 1, 2000, have 2 years to complete a reserve fund study and to establish a reserve fund
- Reserve fund studies must be conducted every 5 years.
- For all condominium corporations with more than 12 units, the board must retain a qualified person to carry out a study of the common property and any other property owned by the corporation. Corporations with 12 or less units have the option to act as its own qualified person, **if** the owners approve in a special resolution.
- A qualified person does a reserve fund study. A qualified person is a person or corporation who employs a person who, based on reasonable and objective criteria, is knowledgeable about depreciating property, the operation and maintenance of that property, and the costs of replacements or repairs to that property.

- The board should tender for a reserve fund study, the same as it would tender for any other contract. When seeking out a qualified person, a responsible board will:
 - ask about the person's qualifications;
 - ask for proof of liability insurance;
 - ask for references and check the references;
 - examine one of the person's other reserve fund study reports to see if it meets the corporation's needs and is understandable;
 - ask what follow up assistance the person will provide;
 - interview the person; ask about fees and any additional costs;
 - ask about time lines for completing the study and report; and
 - hire the person that meets the corporation's needs.

- The qualified person must, complete the reserve fund study and prepare a report for the common property and other property owned by the corporation, to:
 - identify what property may need to be repaired or replaced within the next 25 years
 - assess the present condition of the property and estimate when the property will need to be replaced or repaired
 - estimate the costs of repair or replacement of the property, at a cost no less than current costs
 - identify the life expectancy of the component when it is repaired or replaced
 - identify the current level of funds in the reserve fund, if any
 - recommend the amount of money, if any, that should be included in or added to the reserve fund
 - describe the basis for making their recommendation.

Reserve Fund Plans

- 4 the Board's role
- 4 the plan
- 4 timing and frequency
- 4 annual report
- 4 disclosure

- ❑ The Board receives the reserve fund study report. Using that report, the Board prepares and approves a reserve fund plan, deciding what work to do and how to fund the costs. The reserve fund plan identifies how the reserve fund will be established, if it does not already exist, and how and in what amounts money will be collected to fund and maintain the reserve fund. It must be based on the reserve fund report and show that sufficient funds will be available, from the owner's contributions or other reasonable method, to repair or replace the property according to the reserve fund report.
- ❑ Corporations may meet their reserve funding requirements by increasing condominium contributions, levying special assessments (immediately or in the future), borrowing money (if the loan is pre-approved at the time the board approves the reserve fund plan), or using any combination of these. This gives the corporation maximum flexibility as to how and when to deal with repair and replacement costs. The original concept of the reserve fund was to have all the money in the bank but give the corporation time to do the work.
- ❑ The reserve fund plan will likely cover a one to five year period. Different Corporations may adopt different looking plans depending on their needs. Plans may be amended by subsequent Boards, but then must be provided to the owners before the amended plan is implemented.
- ❑ All owners must receive a copy of the board's approved reserve fund plan before money is collected for the fund.
- ❑ At every annual general meeting after the study is complete, the board must give an *annual report on the reserve fund* that includes the opening balance, payments made in an out of the fund, and a list of the property components repaired or replaced during the year.
- ❑ At any time, the owners, purchasers or lenders can ask for a copy of the reserve fund study report, reserve fund plan or annual report.

Doors & Windows

- 4 previous default - part of the unit
- 4 Sept. 1 default - part of the common property
- 4 importance of the plan

- ❑ Under the old Act, the doors and windows in a unit were part of the unit, unless the condominium plan said otherwise.
- ❑ On September 1, 2000, doors and windows on the interior walls of a unit are part of the unit. (Remember, in a bare-land unit, the entire building is part of the unit.) Doors and windows on exterior walls of the unit are part of the common property, unless the condominium plan says otherwise. Door includes the door, the frame and the assembly components. Window includes the glass, the frame and the assembly components. Neither includes casings, trims and mouldings.
- ❑ Where the door and window were previously part of the unit, but not specified as so on the plan, owners have until September 1, 2002 to adopt a special resolution to amend their plan to keep the doors and windows as part of the unit.

Dispute Resolution - The Options

4 non-legal means

4 sanctions

4 mediation

4 arbitration

4 court action

4 section 60.1

- ❑ Corporations continue to have non-court methods to resolve by-law disputes – talking, negotiation, access to municipal by-law enforcement officers and authorities, etc.
- ❑ Owners can pass by-laws setting out monetary or non-monetary sanctions for breaching the by-laws. Boards will use the court process to enforce these new by-law provisions if necessary. Sanctions can include financial penalties of up to \$10,000.00 but the Board must prove to the court that the owner breached the by-law, the by-law was valid, and the sanction is appropriate.
- ❑ The Act recognizes mediation and arbitration as alternative ways to resolve condominium disputes. Mediation means the parties bring in an impartial person to assist them to negotiate their own resolution. Arbitration involves

bringing in an impartial arbitrator or arbitration panel to hear the parties' cases and make a binding decisions for the parties. Parties share the costs of the mediator or arbitrator. Both processes are voluntary. If the parties cannot agree on a mediator or arbitrator to use, the Alberta Arbitration and Mediation Society can appoint a person.

- Corporations and owners continue to have access to the courts.
- An interested party (anyone with a registered interest in unit) to ask the Court to remedy improper conduct of the developer, a condominium corporation, an employee of the corporation, a director or an owner. Improper conduct is defined and includes such things as not complying with the Act, regulations or by-laws, conducting business affairs or exercising powers in a manner that is oppressive or unfairly prejudicial to the interest of the interested party. The court has a wide range of powers to remedy such improper conduct including appointing an investigator, giving directors to stop doing the action or to do certain things, awarding damages and costs, whether on an interim basis or in a final order.

Miscellaneous

- 4 Amending or modifying condominium plans
- 4 Amalgamating condominium corporations
- 4 Name change for condominium corporations
- 4 Inspection of records by mortgagee
- 4 Fair dealing
- 4 New units
- 4 Phasing
- 4 Sale or lease of common property
- 4 Exclusive use areas
- 4 Renting units
- 4 Administrators
- 4 Termination of condominium
- 4 Builder's liens
- 4 Fines

- ❑ A condominium corporation can amend or modify its plan. The procedures for amending a condominium plan include a special resolution of the owners and court approval.
- ❑ Two or more condominium corporations can amalgamate if they follow the steps in the Regulation 46 –56. Owners must receive notice and approve the amalgamation.
- ❑ A condominium corporation can change its name to “Condominium Corporation No. _____#####_____”, if the Board passes a motion to do so.
- ❑ Mortgagees can, upon request, inspect the records of the corporation pertaining to its management and administration and the minutes of board and general meetings.
- ❑ Developers and purchasers have an obligation to deal fairly with each other.
- ❑ The provisions dealing with sales of new units by developers applies to all units, not just residential. Developers must provide an occupancy permit on a new unit. There are provisions to ensure the common property is completed. The developer has to disclose a significant amount of information to the buyer. The developer must hold the money in trust until a cost consultant says the unit and the common property or related common property are substantially complete.
- ❑ Developers can develop condominiums in “phases”, a process recognized and governed by the Act and regulations.
- ❑ Corporations cannot dispose of or lease common property without a special resolution of the owners.
- ❑ Boards can grant exclusive use of the common property to an owner. Where the exclusive use area is designated, the Corporation can also delegate to the owner the responsibility to care for and maintain that area.
- ❑ Owners who wish to rent their unit (regardless of the type of unit) must give advance notice to the Board, containing information on how to reach the owner and the monthly rent. The Board can charge the owner a deposit equal to one

month's rent. If the tenant breaches the by-laws or the Act or threatens or harms someone in the complex or causes damage to common property, the Board can ask the owner to evict the tenant or the Board can evict the tenant. The owner would pay the costs of eviction.

- A person with an interest in a unit (owner or mortgagee) or the Corporation can ask the Court to appoint an administrator for the corporation. The administrator steps into the shoes of the Board and charges the corporation a fee to act.
- By special resolution the owners can vote to terminate a condominium. An owner, lender or the corporation can ask the court to terminate a condominium. The debts of the corporation are paid first and then the money distributed back to the owners in proportion to their unit factors.
- A builder's lien can be registered on the condominium plan and it is deemed to be registered on all the unit titles.
- A person can lay a private charge or information as the application to have a person prosecuted and, if found guilty, fined under the Act.