

# **Condominium Act Review:**

A DISCUSSION PAPER



# **Condominium Act Review:**

A DISCUSSION PAPER



# Table of Contents

<b>Background and Context to the Review of the Condominium Act</b> .....	<b>1</b>
<b>Table of Issues Included in this Discussion Paper</b> .....	<b>3</b>
<b>Issue 1:</b> Conversion of Small Buildings/Reserve Fund Studies .....	<b>4</b>
<b>Issue 2:</b> Maintenance & Repairs/Insurance .....	<b>5</b>
<b>Issue 3:</b> Reserve Fund Levels for Small Condominium Corporations.....	<b>6</b>
<b>Issue 4:</b> Objects & Powers of Condominium Corporation/Sale of Property .....	<b>7</b>
<b>Issue 5:</b> Rights of Way and/or Easements on the Property .....	<b>9</b>
<b>Issue 6:</b> Appointment of Management Company .....	<b>10</b>
<b>Issue 7:</b> Common Elements Corporations & Recreational Corporations.....	<b>11</b>
<b>Issue 8:</b> Rules for Use of Common Elements.....	<b>12</b>
<b>Issue 9:</b> Agreements of Purchase & Sale: “Cooling Off” Period .....	<b>13</b>
<b>Issue 10:</b> Documentation for Phased Developments .....	<b>14</b>
<b>Issue 11:</b> Budget Estimates Provided by Declarants to Potential Purchasers.....	<b>15</b>
<b>Issue 12:</b> Purchase of Units by Declarant When Conducting the Affairs of the Condominium Corporation.....	<b>16</b>
<b>Issue 13:</b> Completion of Common Elements and Amenities by Declarant.....	<b>17</b>
<b>Issue 14:</b> Landlord-Tenant Relationship between the Condominium Corporation and Tenant of a Unit.....	<b>18</b>
<b>Issue 15:</b> Parking.....	<b>20</b>
<b>Issue 16:</b> Charging of Occupancy Fees .....	<b>21</b>
<b>Issue 17:</b> Cost of Arbitration .....	<b>23</b>
<b>Issue 18:</b> Phased Development Issues .....	<b>25</b>
<b>Issue 19:</b> Notice to Mortgagees in Event of Catastrophic Loss .....	<b>26</b>
<b>Appendix A:</b> List of Administrative and other Matters .....	<b>27</b>
<b>Appendix B:</b> Condominium Ownership and Governance: A Primer .....	<b>32</b>



# Background and Context to the Review of the Condominium Act

The Condominium Act was introduced to Nova Scotia in 1971.<sup>1</sup> The Act was intended to govern the creation, use, management, and termination of condominium corporations in Nova Scotia. This legislation created a new form of real property ownership—one that has been growing steadily since the Act's inception.

The first condominium corporation was accepted for registration on October 27, 1972. In February 1985, there were approximately 50 condominium corporations in the province. That number has mushroomed in the last 20 years. Today there are over 300 condominium corporations in Nova Scotia, comprising some 12,000 units.

Service Nova Scotia and Municipal Relations promotes fairness in the marketplace and champions consumer protection through education, regulation, and complaint resolution. With condominium corporations and units, this consumer protection is facilitated through the Condominium Act and Regulations.

The Condominium Act sets out requirements to register a condominium corporation and establishes a basic framework for its operation (including bylaws, disclosure requirements, and corporate responsibilities). The Act also defines the role and responsibilities of the Registrar of Condominiums. The Act is supported by regulations, which provide more detailed specifications of the registration and operations process.

Service Nova Scotia and Municipal Relations has prepared a public information guide called Consumer Information: Buying a Condominium. It can be found on the internet at [www.gov.ns.ca/snsmr/consumer/condo.asp](http://www.gov.ns.ca/snsmr/consumer/condo.asp) and is reproduced as Appendix "B" to this paper (Condominium Ownership and Governance: A Primer). The guide offers a useful overview to condominium ownership and governance.

The Condominium Act was last amended in 2000, after a rigorous process of stakeholder consultation, including the establishment of a committee that included Service Nova Scotia and Municipal Relations, property managers, unit owners, condominium corporations, and members of the legal community representing both declarants and condominium owners/corporations.

That process gave way to amendments that determined the appropriate majorities to make decisions about condominium declarations and bylaws, common elements, and repairing substantial damage; established a framework to arbitrate disputes; and set out requirements for reserve funds, among many others.

While the improvements to the Act from the 2000 review were significant, the business of condominium development and operation has changed a great deal in the intervening years. Stakeholders have stated that it is time for the Act to see further reviews and updates. To that end, the Minister of Service Nova Scotia and Municipal Relations called for participation in a Condominium Act Review Committee, which met six times in the summer and fall of 2008. The committee members represented condominium owners, condominium stakeholder associations, managers, the legal profession, and the regulators, and brought forward for discussion issues from a number of points of view in the development and operation of condominium corporations.

<sup>1</sup> SNS 1970-71, C.12.

**The members of the Condominium Act Review Committee were:**

John MacKay, *Chair, Service Nova Scotia and Municipal Relations*

Jo-Ann Hamilton, *Registrar of Condominiums, Service Nova Scotia and Municipal Relations*

Ian MacLellan, *Deputy Registrar of Condominiums, Service Nova Scotia and Municipal Relations*

Brad Gibb, *Project Coordinator, Service Nova Scotia and Municipal Relations*

Rhia Perkins, *Research & Statistical Officer, Service Nova Scotia and Municipal Relations*

Mark Coffin, *Registrar General of Land Titles & A/Policy Analyst, Service Nova Scotia and Municipal Relations*

John Cameron, *QC, Service Nova Scotia and Municipal Relations*

Michelle Higgins, *Senior Solicitor, Department of Justice*

Patrick Cassidy, *QC, Cassidy Nearing Berryman*

Patsy Ernst, *Canadian Condominium Institute*

Carol Conrad, *Canadian Condominium Institute*

Elizabeth Haldane, *Stewart McKelvey (representing the Nova Scotia Barrister's Society)*

Lorne Verabioff, *Condominium Owners of NS*

Ray Hunt, *Condominium Owners of NS*

Erin O'Brien Edmonds *QC, Burchell MacDougall*

Bryna Fraser, *Burchell MacDougall*

Dan Galetti, *Merit Property Management*

Lisa Power, *Citigroup Property Management*

The committee raised and discussed 54 issues relating to possible amendments to the Condominium Act. During their discussions, the committee reviewed legislation elsewhere in Canada, with emphasis on those in place in Alberta, British Columbia, Manitoba, and Ontario.<sup>2</sup>

The issues canvassed by the committee<sup>3</sup> can be divided into three categories:

- Administrative or straightforward amendments that did not need debate or were resolved during committee discussions/do not seem to need broad consultation
- Complex issues needing further input from a broad base of stakeholders<sup>4</sup>
- Those that, on further investigation, were determined not to need any action as they were inappropriately identified as issues<sup>5</sup>

Comments on all issues considered by the Committee, including the administrative matters listed in Appendix "A," are welcome. Readers should send their comments to

Ms. Rhia Perkins

Research and Statistical Officer

**Service Nova Scotia and Municipal Relations**

PO Box 1003, Halifax, NS B3J 2X1

perkinsr@gov.ns.ca

To be considered, comments must be submitted by **February 13, 2009**.

<sup>2</sup> These provinces are the "jurisdictions reviewed" referred to in this discussion paper.

<sup>3</sup> Issues are not listed in order of perceived importance or priority. Numbering is used for identification purposes only.

<sup>4</sup> It should be noted that many issues of concern to members of the condominium community are common to new home construction in general. For this reason, Minister Muir launched the investigation into homeowner and industry concerns about new residential construction, including condominiums, as a separate initiative. The Condominium Act Review Committee did not deal with the issues addressed by the New Homeowner Protection Review and Discussion Paper. That discussion paper can be found at [www.gov.ns.ca/snsmr/nhp/pdf/NHP-DiscussionPaper.pdf](http://www.gov.ns.ca/snsmr/nhp/pdf/NHP-DiscussionPaper.pdf). The response booklet for the New Homeowner Protection Discussion Paper can be found at [www.gov.ns.ca/snsmr/nhp/pdf/NHP-ResponseBook.pdf](http://www.gov.ns.ca/snsmr/nhp/pdf/NHP-ResponseBook.pdf).

<sup>5</sup> These and the administrative issues in (a) are listed in Appendix "A" to this discussion paper.

## Table of Issues included in this Discussion Paper

<b>Issue Number</b>	<b>Issue</b>	<b>See Page</b>
1	Conversion of Small Buildings/Reserve Fund Studies	4
2	Maintenance & Repairs/Insurance	5
3	Reserve Fund Levels for Small Condominium Corporations	6
4	Objects & Powers of Condominium Corporation/Sale of Property	7
5	Rights of Way and/or Easements on the Property	9
6	Appointment of Management Company	10
7	Common Elements Corporations & Recreational Corporations	11
8	Rules for Use of Common Elements	12
9	Agreements of Purchase & Sale: "Cooling Off" Period	13
10	Documentation for Phased Developments	14
11	Budget Estimates Provided by Declarants to Potential Purchasers	15
12	Purchase of Units by Declarant When Conducting the Affairs of the Condominium Corporation	16
13	Completion of Common Elements & Amenities by Declarant	17
14	Landlord-Tenant Relationship Between the Condominium Corporation and Tenant of a Unit	18
15	Parking	20
16	Charging of Occupancy Fees	21
17	Cost of Arbitration	23
18	Phased Development Issues	25
19	Notice to Mortgagees in Event of Catastrophic Loss	26

## ISSUE 1

# Conversion of Small Buildings/Reserve Fund Studies

### Background:

The Act currently requires that the declarant/developer of proposed corporations that have 10 or more units prepare and submit a reserve fund study as part of the registration process. The Act does not require a study where there are less than 10 units, even if the condominium application relates to conversion of an existing building.

Some conversions are of buildings that will require fairly major expenditures for repair/replacement in the relatively near future, which can result in unexpected special assessments to cover repair costs.

### Proposal:

Amend the Act to state that a reserve fund study must be prepared whenever a declarant seeks to convert an existing building to condominium status. The study must be given to the Registrar to have the declaration and description accepted for registration and to prospective purchasers to give them information on the condition of the building. A condominium corporation of less than 10 units would not need to update the study every five years.

### Other Jurisdictions/Comments:

In British Columbia, the owner/developer must establish a contingency reserve fund according to a formula set out in the Strata Property Act.

In Ontario, all condominium corporations must conduct periodic studies to determine whether the amount of money in the reserve fund and the amount of contributions collected by the corporation is adequate to provide for the expected costs of major repair and replacement of the common elements and assets of the corporation.

### Matters for Consideration:

Requiring a reserve fund study as part of the registration process for small style conversions would not have to result in the corporation continuing to update the study. It would be a one-time event geared to providing information on the condition of a building, much like a house inspection report would do for traditional homes. The report may not be available at the time a purchaser receives a purchase and sale agreement, as the repairs, upgrades, etc. may not yet be complete. This would mean the engineer preparing the study would not have the required information and documentation to include in the study.

### Questions:

1. Do you think it is appropriate to require a reserve fund study to be part of the registration process for all existing building conversions, no matter how many units are to be in the condominium corporation?
2. When do you think the appropriate time should be for the declarant to give the reserve fund study information to a prospective purchaser? When the agreement of purchase and sale is signed? At closing? Or at some other time?

## ISSUE 2

# Maintenance & Repairs/Insurance

**Background:**

Section 35 of the Act outlines the corporation's obligation to repair the units and common elements after damage. The section also requires the corporation to make any repairs that an owner is obligated to make and that the owner does not make within a reasonable time. There are currently no explicit provisions for recovery of repair costs paid by the corporation that were the responsibility of the unit owner.

The Act does not refer to an owner's responsibility to pay the condominium corporation's insurance deductibles if the damage resulted through negligence or act of omission by the unit owner.

**Proposal:**

Amend the Act to the effect that

- Where a corporation carries out repairs to the unit owner's unit that are the unit owner's responsibility under the Act, declaration, or bylaws, the costs not covered by insurance are a common elements expense and are payable by the unit owner.
- If a unit owner is responsible for damage to any unit or common elements then that owner must pay any insurance deductible.
- Failure to pay for the repairs or deductible gives the corporation power to file a lien against the unit for the outstanding amount.

**Other Jurisdictions/Comments:**

N/A

**Questions:**

1. Do you think that it is appropriate to hold a unit owner responsible for the deductible for an event of their causing?
2. Do you support a lien as the method to enforce payment by an owner, as is the standard enforcement mechanism for other common elements expenses?

## ISSUE 3

# Reserve Fund Levels for Small Condominium Corporations

### **Background:**

Condominium corporations of less than 10 units are required by the Condominium Act to establish and maintain a reserve fund balance equal to 10 per cent of their annual budget. Most of these small condominium corporations have small annual budgets, which results in a fund that is often not sufficient to complete scheduled repairs.

### **Proposal:**

Condominium corporations of fewer than 10 units should be required to maintain a reserve fund balance equal to 100 per cent of their annual budget.

### **Other Jurisdictions/Comments:**

N/A

### **Matters for Consideration:**

Condominium corporations of less than 10 units that are already operating will likely be faced with financial hardship if they are required to immediately contribute the required amount of money to the fund.

### **Questions:**

1. What suggestions or comments do you have with respect to the proposal to increase the required reserve fund balance for condominium corporations of less than 10 units to be an amount equal to the corporation's total annual budget?
2. What would be a reasonable time frame to allow new condominium corporations of less than 10 units to build the reserve fund to its required balance?
3. What would be a reasonable time frame to allow existing condominium corporations of less than 10 units to build the reserve fund to its required balance?

## ISSUE 4

# Objects & Powers of Condominium Corporation/ Sale of Property

## Background:

Subsection 14(3) of the Condominium Act allows a corporation to sell its real and personal property, grant or release easements, etc. on receiving the consent of owners representing ownership of at least  $66 \frac{2}{3}$  per cent (or two thirds) of the common elements. Subsection 40(1) says that a sale of the property or any part of the common elements may be authorized by a vote of owners who represent ownership of 80 per cent of the common elements. Subsection 40(2) requires that all owners must sign the transfer (conveyance) document. It seems prudent to seek consistency in these percentages.

## Proposal:

Acquisition and sale of real property should require the consent of owners of at least 80 per cent of the common elements.

Acquisition and sale of personal property can be done by the board without approval of owners if the amount is less than an amount stipulated in the bylaws, or the lesser of \$2,500 or five per cent of the corporation's annual budget if the bylaws are silent. Otherwise it requires the consent of owners of at least  $66 \frac{2}{3}$  per cent of the common elements.

Once the required percentage has been achieved, amendments must include provisions so that the property transferred by the corporation is conveyed free and clear of mortgages and other financial obligations (such as builders' liens), and (if applicable) the Condominium Act, declaration, bylaws, etc. no longer apply to the transferred property.

The board may then prepare, approve, sign, and submit any documents related to the acquisition or sale on behalf of the owners.

Corporations must submit documents determined to be necessary by the Registrar to substantiate that they have the appropriate level of consent.

Other than removing the effective veto that requires 100 per cent owners' signatures on transfer documents, there should be no change to dissenters' rights under the Act except, for consistency, the arbitration should be under the Commercial Arbitration Act as per other sections of the Act.

## Other Jurisdictions/Comments:

In Ontario, to sell the property or a part of the common elements, a vote in favour from at least 80 per cent of the unit owners is needed, along with the support of at least 80 per cent of the people who have registered claims against the property being sold.

When a sale takes place, the board is able to deliver to the purchaser the transfer documents signed by the authorized officers of the corporation.

In British Columbia, three quarters of the vote at an annual or special general meeting is needed to acquire land.

The corporation may, without prior approval, accept a grant or discharge of an easement or restrictive covenant benefiting the corporation's land.

Three quarters of the vote at an annual or special general meeting is needed to sell, lease, mortgage, grant an easement over, grant a restrictive covenant affecting, or otherwise dispose of land that is a common asset, plus the consent of holders of financial charges on the common property.

### **Matters for Consideration:**

Under the Nova Scotia Condominium Act, owners who oppose the sale of property are entitled to have fair market value determined by arbitration. Where the proceeds of the sale are inadequate to pay the fair market value, each of the owners who voted for the sale is liable for a portion of the deficiency as determined by the proportions of their common interests.

Note: Any amendments must include provisions so that a deed from a corporation is deemed to be a deed out of each of the unit owners, so compliance with the Land Registration Act is assured.

All jurisdictions reviewed have dissenters' rights provisions.

### **Questions:**

1. Do you believe that the acquisition/sale of real property is significant enough to warrant requiring the consent of the owners representing 80 per cent rather than 66 2/3 per cent of the common elements?
2. Do you think that, once there is a vote in favour, the board of directors should be able to execute the transfer documents on behalf of the owners?
3. Do you agree with the proposal that the dissent provisions should remain unchanged?

## ISSUE 5

# Rights of Way and/or Easements on the Property

## Background:

Currently, to have a declaration accepted for registration, a declarant must get the consent of all people having registered encumbrances against the land/phase to be registered, as well as all people who are subject to registered encumbrances in favour of the condominium lands. Consent does not extinguish a person's rights or responsibilities; it merely makes sure that they are aware of the change to the use of the property.

The requirement for consent includes any property owner who has the benefit of access/crossing the proposed condominium corporation property. In some cases, usually in rural areas, locating the party with the benefit can be difficult. Further, some people do not understand why consent is being sought, or the implications of consent, and periodically refuse to give consent. This restricts the declarant from being able to develop their property. It has been alleged that some adjacent property owners see this as an opportunity to "hold the declarant for ransom."

## Proposal:

Change the provisions of the Act to require that landowners who have easement benefits over (what will become) the condominium property are to be given notice of the condominium application. Thereafter, they have 45 days to object by way of commencing action in the Supreme Court of Nova Scotia and recording a Certificate of Lis Pendens (confirming that action has been commenced) at the Land Registration Office. Signatures will still be needed from encumbrancers such as utilities.

## Other Jurisdictions/Comments:

In Ontario, the consent of every person having a registered mortgage against the land or interests appurtenant to the land is needed.

In British Columbia, the consent of each holder of a registered charge on all or part of the land to be included in the condominium is needed, unless, in the registrar's opinion, the interests of people who have not signed are not adversely affected by the acceptance for registration of the declaration.

## Questions:

1. Do you support removing the consent requirement and replacing it with a notice requirement?
2. Do you think that it is appropriate to put the legal onus on an easement benefit holder to commence action in the event they feel their interest will be adversely affected by the registration of the condominium declaration?
3. Do you feel it is necessary to continue to require the consent of all landowners who have easement benefits over what will become the condominium corporation lands?
4. Please identify any perceived risk with eliminating the current requirement.
5. Do you believe that this change would lessen consumer/unit owner protection? Please explain.
6. If you support retaining the status quo, would you also support a provision that would allow a court, on application, to waive the consent requirement?

## ISSUE 6

# Appointment of Management Company

### Background:

Sometimes a declarant will enter into a long-term contract with a management company of their own choosing. Once the operations of the corporation are handed over to unit owners in accordance with the Act, the board may not agree with the terms of the management contract or the company chosen to manage.

### Proposal:

Add wording to prohibit the declarant on behalf of the corporation or the corporation's board from entering into a management contract for a period exceeding two years and/or add a clause that allows the board to cancel the management agreement on 60 days' notice.

### Other Jurisdictions/Comments:

In British Columbia, contracts are entered into by or on behalf of the corporation before the first annual meeting. They are terminated no longer than four weeks after the second annual general meeting. The corporation may, by majority vote at the second annual meeting, continue an existing contract.

In Alberta and Ontario, a board can terminate a "developer's management agreement" on 60 days' notice.

### Questions:

1. Do you feel that there should be a provision for either a restriction on the length of a management contract (two years) or a provision that allows the board to cancel the agreement on 60 days' notice, or both?
2. Would you like to see a restriction of two years on the term of any other type of contract the declarant has entered into on behalf of the corporation (e.g., landscaping, snow removal, etc.)?

## ISSUE 7

# Common Elements Corporations & Recreational Corporations

**Background:**

Common elements corporations are condominium corporations that consist of common elements only and no units (e.g., a sewage treatment plant or a private access road in to a condominium property from a public road). The ownership in these corporations is created by the ownership of adjacent freehold property and/or a unit in an adjacent condominium corporation. Common elements corporations are currently not provided for in Nova Scotia's Condominium Act.

It has been suggested that many areas of Nova Scotia that do not have access to municipal services such as water and sewage disposal could benefit from such corporations. The cost of establishing and operating these services can be burdensome. The opportunity to divide the costs of operation among a large number of homeowners rather than a few is likely to make development more feasible and desirable.

The regulations (Section 71) already contemplate recreational corporations (e.g., a riding stable where the horse stalls are units and barn and paddock facilities are common elements) as they provide the classification of "recreational property." Further, the fee schedule contains a list of fees required to be paid to have recreational units accepted for registration. However, there are currently no provisions with respect to documentation and disclosure requirements specific to these types of corporations.

**Proposal:**

Add provisions for common elements and recreational condominium corporations.

**Other Jurisdictions/Comments:**

In Ontario, the Act specifically outlines provisions for common elements condominiums, but no jurisdiction reviewed provides for recreational condominiums.

**Questions:**

1. What additional documentation and/or disclosure information do you feel is necessary to be provided for recreational condominium corporations?
2. Are you of the opinion that the legislation should be amended to allow for common elements condominium corporations? If not, please give your reasons.
3. What additional documentation and/or disclosure information do you feel is necessary to be provided for common elements condominium corporations?

## ISSUE 8

# Rules for Use of Common Elements

### **Background:**

The Act states that a corporation's bylaws may provide for the creation of common elements rules by the owners, but does not outline a framework for enacting the common elements rules, nor does it address who has the authority to do so. There is much confusion in the condominium community as to whether the board can make rules or if rules are to be brought to the general membership for review and consent.

### **Proposal:**

Add a provision to allow a board to propose rules, circulate them, and to call a meeting to ratify the proposed rules by a majority of attendees (where there is quorum). Rules would not take effect until ratified by unit owners.

### **Other Jurisdictions/Comments:**

In British Columbia, boards are allowed to make rules on prompt notification to the owners and tenants. Rules must be ratified at the next annual general meeting of the corporation. Failure to ratify makes the rule null and void.

In Ontario, boards are allowed to make, amend, or repeal common elements rules. The rules must be reasonable and consistent with the Act, declaration, and bylaws. Owners can amend or repeal rules at a meeting called for that purpose. Declarants' rules (made before registration of the declaration) must be confirmed by a rule of the corporation.

### **Questions:**

1. Do you think that the proposed framework for the creation of common elements rules is a fair process for all owners?

## ISSUE 9

## Agreements of Purchase & Sale: “Cooling Off” Period

### Background:

Under Section 75 of the Condominium Regulations, purchasers in Nova Scotia have a five-day “cooling off” period, during which time a buyer can review documentation (declaration, bylaws, common elements rules, survey and design plans) with a view to discovering anything that, in the buyer’s opinion, materially affects the use and enjoyment of the property. If the seller will not remove the offending provision and the buyer will not waive it, the agreement becomes null and void and the deposit gets refunded to the buyer.

### Proposal:

Increase the review period from 5 to 10 days, and broaden the reasons for objection to include dissatisfaction for any reason.

### Other Jurisdictions/Comments:

Alberta and Ontario give a buyer 10 days to rescind an agreement after receiving a copy of it.

### Matters for Consideration:

Five days to review condominium documentation is not a lot of time to consider any negative impact of agreeing to buy a unit, nor does it give a purchaser sufficient time to consult with their lawyer. The existing standard whereby an item must “materially affect the use and enjoyment of the property” is ambiguous.

### Questions:

1. Do you think that the proposed 10-day “cooling off” period is too long? Too short?
2. Do you agree or disagree with widening the “out” clause by extending it beyond covering only those things that “materially affect the use and enjoyment of the property”?

## ISSUE 10

# Documentation for Phased Developments

[See also Issue 53, Location of Service Easements, Appendix A.]

### **Background:**

Current legislation does not contemplate developments that are not on municipal services, but rather provide their own services such as wells and sewage treatment systems. In practice, when these types of developments are presented for registration, the declarant has been required to provide other documentation relating to these services, such as hydrologists' reports and sewage treatment system development and operating permits from the Department of the Environment. These documents are help to make sure that the services are or will be feasible and adequate for the proposed development.

### **Proposal:**

Add a requirement for the declarant to arrange to give the Registrar documentation that offers satisfaction that the first and subsequent phases are self-sufficient from the perspective of services and utilities (the services are on-site and contained within land dedicated to the development or the appropriate easement/agreements are in place if they are off-site; see issue 53, Appendix A) or confirmation that the units are responsible for establishing and maintaining their own services and utilities.

### **Matters for Consideration:**

The proposed wording for this requirement will be quite broad and will reflect "any other document or confirmation that is deemed appropriate for administration of the Act." It is not possible to contemplate all scenarios that may be presented in the future that may necessitate additional documentation/confirmation for consumer protection purposes.

### **Questions:**

1. Do you agree that it is in the best interests of prospective unit owners and condominium corporations to provide the Registrar with this authority? Please explain.
2. Do you think that the Registrar should also have this authority for non-phased developments?

## ISSUE 11

# Budget Estimates Provided by Declarants to Potential Purchasers

**Background:**

It is not uncommon for the actual budget in the first year of operation of a corporation to exceed, sometimes significantly, the declarant's budget estimates given to prospective purchasers. There is no mechanism in the Condominium Act to address even unrealistically low budget estimates.

**Proposal:**

Amend the Act to make the declarant responsible for any shortfall in the operating budget for the first 12 months of operation, except for unforeseen expenses not within the declarant's control (such as the cost of heating oil).

**Other Jurisdictions/Comments:**

Both Ontario and British Columbia make the declarant responsible for covering budget shortfalls against actual expenses for either the 12-month period after registration of the declaration (Ontario) or sale of the first unit (BC).

**Questions:**

1. Do you support making the declarant responsible for expenses over and above their budget for the first year of operations?
2. If so, should this financial responsibility be absolute? What about unforeseen expenses such as the cost of heating oil?
3. If this provision is carried out, how should disputes between the declarant and condominium corporation be resolved? Mediation-arbitration under the Act? Small Claims Court?

## ISSUE 12

# Purchase of Units by Declarant When Conducting the Affairs of the Condominium Corporation

### Background:

Many times unit purchasers know that the corporation will include a superintendent's unit, the cost of which will be borne/paid by the unit owners. There have been instances in Nova Scotia where, before turning over control of the corporation to unit owners, a declarant sells and enters into mortgages for more than one unit on behalf of the corporation. Sometimes this is done without the knowledge of the unit owners in the development.

### Proposal:

Add provisions to the Act to state that no declarant shall enter into a contract for purchase of or for a mortgage on more than one unit on behalf of a condominium corporation for its own use. Once at least 51 per cent of the units have been sold and the operation of the condominium corporation has been transferred from the declarant to the condominium corporation members, unit owners representing at least 80 per cent of the common elements may consent to the purchase of additional units for the corporation's use from the declarant.

### Other Jurisdictions/Comments:

British Columbia has a provision in its Act that prevents a declarant from contracting with itself or a related company, but no jurisdiction reviewed specifies that a declarant can sell a maximum number of units to the corporation.

### Questions:

1. Do you agree that declarants should be prevented from selling/mortgaging more than one unit to the condominium corporation?
2. If so, should a declarant always be prevented from selling more than one unit to the corporation?
3. Should the restriction depend on the development? (What if the corporation's amenities require the sale of extra unit(s) to the corporation [e.g., for use as a guest suite]?)

## ISSUE 13

# Completion of Common Elements and Amenities by Declarant

**Background:**

There is nothing in the current Act that requires a declarant to complete common elements or amenities that are included in agreements of sale with owners. In the past, some declarants have failed to complete the common elements and amenities in accordance with the agreements.

**Proposal:**

Amend the Act to state that the declarant has a duty to complete the common elements and amenities and to provide for financial holdbacks in the event of non-completion at the time of closing on a unit.

**Other Jurisdictions/Comments:**

Alberta's Act has detailed provisions covering completion of common elements. It requires the declarant to hold in trust a proportionate share of the cost to complete the common elements.

**Questions:**

1. Do you agree with amending the Act to impose a duty on the declarant to complete the common elements and amenities?
2. If so, do you support financial holdbacks on closing to encourage completion? If not, how would you make sure that the declarant completes the work?
3. How do you think a holdback should be calculated?
  - Leave it to the declarant's and purchaser's lawyers to work out?
  - On the proportionate share of the estimated cost to complete?
  - A straightforward percentage of the purchase price? If so, what would an appropriate percentage be?
  - Some other formula?
4. Do you support including a time limit for the declarant's completion of the outstanding items? If so, how would that time limit be determined? What should happen if the declarant misses the time limit?

## ISSUE 14

# Landlord-Tenant Relationship between the Condominium Corporation and Tenant of a Unit

### Background:

No landlord-tenant relationship exists between condominium corporations and tenants of non-owner occupied units. As a consequence, the corporation has no recourse under the Residential Tenancies Act to enforce the corporation's rules against tenants directly, if the owner/landlord fails to take action against his tenant.

### Proposal:

Amend the Act so that if an owner/landlord fails to respond to a directive from the corporation about the owner or their tenant for non-compliance with the Condominium Act and Regulations, the corporation's declaration, bylaws, and common elements rules, the corporation has the option to do one of the following:

- take the unit owner/landlord to mediation-arbitration (this option currently exists)
- step into the role of landlord under the Residential Tenancies Act and give the corporation all the rights of a landlord including the right to apply to terminate a tenant's lease should the landlord fail to act when requested by the condominium corporation (this is a new option)

If the corporation is successful at mediation-arbitration or before the Residential Tenancies Officer, the costs incurred by the corporation are to be paid by the owner/landlord. The corporation is to have a lien for the unpaid amount against the unit and common interest of that owner/landlord if the costs are not paid by the owner/landlord.

The regulations will flesh out the procedure that must be followed before the corporation can pursue a claim/request for action under the Residential Tenancies Act.

### Other Jurisdictions/Comments:

In British Columbia, all tenants must complete a "Form K," which states that they have received and intend to obey all bylaws of the corporation. If a tenant or occupant of the unit contravenes a bylaw or rule, the tenant is responsible and may be subject to penalties, including fines, denial of access to recreational facilities, and, if the corporation incurs costs for remedying a contravention, payment of those costs.

In Alberta, owner-landlords must pay a deposit of one month's rent to the corporation to cover damage to common elements property. The corporation also has the ability to go to court to remove a tenant.

In Manitoba, the corporation has more power. The corporation may give a tenant renting a unit from an owner a notice of termination if the tenant fails to remedy, within a reasonable time after having received written notice to do so from the corporation, a contravention or breach of the declaration, bylaws, or rules of the corporation.

### Matters for Consideration:

Regulations would have to be developed so that an appropriate framework would be followed before the Residential Tenancies Act applied to a particular circumstance.

Care will have to be taken with the wording so that the deemed landlord-tenant relationship only applies to making sure there is compliance with the Condominium Act, declaration, and bylaws of the corporation.

**Questions:**

1. Do you agree that a condominium corporation should be able to have standing as landlord under the Residential Tenancies Act if the owner/landlord fails to take action against the tenant?
2. What procedures should be followed by the condominium corporation with respect to requesting the owner/landlord take action against their tenant before the condominium corporation can exercise its rights as the landlord designate or assignee?

## ISSUE 15

# Parking

### Background:

Sometimes unit purchasers are given information on exclusive use common elements, such as parking spaces, that does not materialize after closing. The committee discussed the need to make sure that purchasers who have entered into purchase and sale agreements and have paid a fee for an extra parking space get the extra space at the end of the day and that subsequent boards can't arbitrarily change the space without the consent of the space holder.

In other words, the committee explored ways to try to ensure that agreed-upon parking arrangements are protected.

### Proposal:

Amend the Act to require declarants to specify how exclusive use common elements are assigned and how many of each category (parking, storage, etc.) are allocated to specific units. Disclosure is to appear in purchase and sale agreements as well as the condominium declarations.

### Matters for Consideration:

Possible parking scenarios include

- separately deeded (the parking unit is purchased in a separate sale)
- deeded as part of the unit (the deed for the condominium unit includes parking areas surveyed as part of the unit)
- exclusive use common elements
  - a) an owner's space is designated by declaration and survey plans (requires declaration amendment to change, which would require approval of owners of 80 per cent of the common elements)
  - b) an owner's space is designated by board of directors (subject to change)
- first come, first served (there is no assigned/designated parking)

The duty to have specific numbers of spaces is currently stipulated by municipalities in accordance with land use bylaws and/or development agreements.

### Questions:

1. What are your views on how the parking allocation should be disclosed?
2. Should the legislation contain a provision that prohibits the declarant from selling or charging a fee for the use of additional parking or storage spaces if they are common elements and not deeded?

## ISSUE 16

# Charging of Occupancy Fees

**Background:**

The Act does not currently include any provisions that govern the charging of occupancy fees to purchasers in that period after possession but before the declaration is accepted for registration by the Registrar and the sale is finalized. There is no maximum number of months that occupancy fees can be charged or any formula for determining the amount to be paid.

There can be several months' delay in the actual registration date from that anticipated or disclosed, and many purchasers are left to pay additional occupancy fees they had not anticipated and that are not credited toward the purchase price of their unit.

**Proposal:**

Amend the Act to give a purchaser the option of occupying the unit after the occupancy permit has been issued and prior to registration taking place. The Act should further specify that the purchaser may not be compelled to occupy the unit before the registration and actual closing date of the unit.

If the purchaser chooses to occupy the unit in accordance with the amended Act, amendments should also specify how the maximum occupancy fee to be charged will be calculated.

The formula for calculating the occupancy fee should be placed in the Act as follows:

- interest calculated on a monthly basis on the unpaid balance of the purchase price at the prescribed rate
- an amount reasonably estimated on a monthly basis for municipal taxes attributable to the unit

Add a specification that the declarant has the duty to complete the development and effect registration within a reasonable time frame. The requirements for purchase and sale agreements should be amended to include a provision that the agreements are to contain a statement specifying the method of how the occupancy fee was calculated, what the actual occupancy fee amount is, the anticipated registration date, and that occupancy fees continue to apply should registration not take place on the anticipated date of registration.

Add the stipulation that the condominium common elements fees cannot be charged to purchasers before the registration takes place.

**Other Jurisdictions/Comments:**

Ontario's Act contains detailed provisions respecting timely registration of the condominium declaration and the occupancy fee that may be charged by the declarant. The declarant is required to take "all reasonable steps" to complete the building and to register the declaration "without delay."

Buyers can pay 100 per cent of the purchase price when taking occupancy of their unit. The monthly rental fee cannot be any greater than the total of the following amounts:

- interest calculated on a monthly basis on the unpaid balance of the purchase price at the prescribed rate
- an amount reasonably estimated on a monthly basis for municipal taxes attributable to the unit
- the projected monthly common expense contribution for the unit

**Questions:**

1. Do you agree that, before the closing of a condominium purchase, occupancy should be optional for the purchaser?
2. Do you agree with the formula for calculating the fee as proposed?

## ISSUE 17

# Cost of Arbitration

## Background:

Section 33 of the Act permits arbitration of disputes between

- unit owners
- the corporation and an owner
- the corporation and property manager
- the corporation and occupier of a unit
- the owner of a unit and the occupier of a unit
- two or more condominium corporations

Any of the parties may give to the other party or parties and to the Registrar notice that the party giving the notice intends to have the dispute arbitrated by a single arbitrator appointed by the Registrar.

Under current Condominium Regulations, the Registrar maintains a list of arbitrators who agree to charge a maximum fee of \$1,000 per day or \$500 per half day for the hearing, plus \$150 per hour for writing the decision.

The cost of arbitration can prevent some owners and corporations from taking advantage of their right to have disputes arbitrated. The suggestion has been made that a mechanism be included to reduce or limit the cost of arbitration, to make the remedy fairer to all parties.

## Proposal:

Amend the Act and regulations to carry out a two-tiered system for resolution of disputes between owners and corporations.

**Tier 1:** Give boards of directors the power to fine owners (for their own actions or those of tenants and guests) for violations of the corporation's rules and regulations for the use of common elements and rules respecting the use of units. Fines should range between \$50 (minimum) and \$500 (maximum).

Fines would be levied only after a procedure of notification and opportunity to correct the violation is completed. This due process would be set out in amended regulations.

Owners would have the right to appeal a fine in accordance with the regulations. Appeals would be made to individuals unrelated to the corporation imposing the fine, with the list and qualifications set by the Registrar. Further appeal would be made to small claims court.

**Tier 2:** More serious disputes over the Act, regulations, declaration, and bylaws would be streamed into a system of mandatory mediation-arbitration. The list of mediators would be established by the Registrar in accordance with amended regulations. Mediation would be required as a first step, and, if unsuccessful, the process would move to arbitration with the same mediator-arbitrator, who would not be disqualified from acting as arbitrator after initially acting as mediator.

## Other Jurisdictions/Comments:

Alberta provides for mediation, conciliation, or similar techniques to encourage settlement of the dispute or, in the alternative, arbitration.

In British Columbia, the arbitrator must, before holding a hearing, advise the parties of the possibility of a mediated settlement.

The strata corporation may fine an owner if a bylaw or rule is contravened by

- the owner
- a person who is visiting the owner or was admitted to the premises by the owner for social, business, or family reasons or any other reason
- an occupant, if the strata lot is not rented by the owner to a tenant

The strata corporation may fine a tenant if a bylaw or rule is contravened by

- the tenant
- a person who is visiting the tenant or was admitted to the premises by the tenant for social, business, or family reasons or any other reason
- an occupant, if the strata lot is not sublet by the tenant to a subtenant

Fines are set in the corporation's bylaws but cannot exceed \$500 for a bylaw breach and \$50 for a rule breach.

### **Matters for Consideration:**

Mediation differs from arbitration in that mediation is a discussion that is facilitated by a third party, whereas arbitration consists of presentation to a third party.

### **Questions:**

1. Do you agree that condominium corporations should be able to fine those who breach the rules and regulations of the corporation?
2. Do you agree that an individual who is independent from the corporation imposing the fine should hear appeals from the corporation's decision to fine for a limited fee? What fee amount would be acceptable?
3. Do you agree with the proposal to have a mandatory mediation-arbitration process for more serious disagreements?

## ISSUE 18

# Phased Development Issues

**Background:**

Under the Act as currently worded, multi-phased condominium developments can receive approval from the Registrar but not be completed by the declarant due to market or other considerations. This must be disclosed to prospective purchasers in the declarations of phased developments. Land set aside by the declarant for future phases can be sold to other individuals for any use that is in compliance with zoning bylaws and other municipal requirements. This means that purchasers in the initial phase can literally buy into a concept that does not come to fruition.

**Proposal:**

Amend the Act to require declarants to place a restrictive covenant on lands set aside for future phases. The restrictive covenant is to stipulate that the parcel can only be used for a similar use to that originally proposed. A buyer may only deviate from the restrictive covenant by receiving written consent from 80 per cent of the owners of units in the completed phase(s) of the condominium corporation.

**Other Jurisdictions/Comments:**

In Ontario, a person who purchases a unit or proposed unit in the corporation before the registration of the amendments to the declaration and description required for creating a phase is entitled to recover damages from the declarant for a difference between the proposed and actual phased development if the difference is "material" and detrimentally affects the use and enjoyment of the person's unit.

**Questions:**

1. Do you agree with restricting a change to the use of land in a proposed phased development without the consent of 80 per cent of owners in the initial phase(s)?
2. Should the proposed number of phases in a development be limited? If so, what would an appropriate maximum number of phases be?

## ISSUE 19

# Notice to Mortgagees in Event of Catastrophic Loss

### Background:

Under the Act as currently worded, a condominium corporation may suffer from a catastrophic loss and in that event, the owners may vote to accept insurance proceeds instead of rebuilding. If so, owners of mortgaged units could theoretically receive insurance proceeds to which the lender is entitled.

### Proposal:

Amend the Act to require that in the event of a catastrophic loss and a decision not to rebuild, each owner must give the board of directors a lawyer's certificate of title outlining the state of encumbrances, along with payout statements for any encumbrances that must be paid, before the owner receives any insurance proceeds. The board/insurance company shall be required to pay out encumbrancers in accordance with the payout statements in the order of priority as certified by the lawyer.

### Other Jurisdictions/Comments:

In British Columbia, if the corporation decides not to repair or replace the damaged property, the insurance trustee or the corporation that receives the payment holds the money and any interest on the money in trust for each person who has an interest in the money, including the holder of a registered charge and must distribute the money according to each person's interest.

### Matters for Consideration:

The proposal would require owners to obtain a lawyer's certificate or statement of encumbrances even if the unit was not mortgaged or subject to any other financial obligation (such as a judgment). Where the unit is registered under the Land Registration Act, the state of title is easily obtained by a review of the parcel register for the unit.

### Questions:

1. Should owners be required to show that there are no liens on their units before they receive insurance proceeds?
2. If you support that concept, but disagree with the proposal that lawyers be providing the information to the corporation, how would you suggest the corporations protect themselves against financial claims when issuing insurance proceeds to owners?

## APPENDIX "A"

**List of Administrative and other Matters****Committee agreement is bolded****Issue****ID #****Issue**

20	Contents & Amendment of Declaration – Require specification of the boundaries of the units. <b>- Amend Act to conform with current practice.</b>
21	Board of Directors: Obligations for Business Conduct <b>- Amend Act to explicitly state that the board is to Act in the best interests of all members.</b> <b>- Suggestions to make directors' terms a consistent length or a mechanism for breaking tie votes should be left to the declarations.</b>
22	Mixed Condominium Developments: Classes of Units – Treat residential and commercial common areas separately. <b>- Provisions already exist, action not required.</b>
23	Bylaws – Amend Act and renumber provisions as required, to clarify that items in declaration need not be reiterated in bylaws. <b>- Housekeeping item to simplify documents.</b>
24	Duties and Powers of Auditor – Clarify that corporations with less than 10 units require financial statements with same content as larger corporations, just not required to be audited. <b>- Adopt provision as proposed, matches current policy.</b>
25	Amalgamation – Amend Act to require reserve fund study where amalgamated corporation will have more than 10 units and where no study was previously completed/required. <b>- Adopt as proposed.</b>
26	Financial Provisions – Clarify contingency fund contributions apply to all units, not selected groups of units; amend Act to permit corporations to place operating budget surpluses into contingency fund. <b>- Adopt as proposed.</b>
27	Clarify ambiguity in current wording re: the collection of money from unit holders by corporations. <b>- Adopt as proposed.</b>
28	Require proof of insurance from unit owners. <b>- No action is recommended due to the difficulties in administration.</b>
29	Delete regulation clause 77(4)(a) re: Canadian Condominium Institute reserve fund analysts and renumber clauses accordingly. <b>- Agree to deletion of the reference to the CCI as it is not an appropriate measure for qualification to prepare reserve fund studies.</b>

Issue ID #	Issue
30	Regulation 80 – Update of reserve fund studies - <b>Add wording to clarify that a full reserve fund study is not required every five years, only significant changes to Master Reserve Fund Spreadsheet and/or funding scenarios.</b> - <b>Clarifies existing requirements.</b>
31	References to old deeds registration system should be modernized to reflect land titles system, as appropriate. [Various sections.] - <b>Housekeeping changes to modernize references to the old system.</b>
32	Consistency of Wording – Require declaration and bylaw wording to match the wording of the Act. - <b>Not practical to implement as bylaws expand on the legislation, therefore no action required.</b>
33	Reserve Fund Management – Strengthen provisions to ensure actual funding occurs. - <b>Amend Act to require board of directors to provide a copy of the reserve fund status certificate and the master reserve fund spreadsheet to the members of the corporation within 60 days of it being received by the corporation. The full reserve fund study is to be available for viewing by corporation members upon receiving reasonable notice.</b>
34	Expropriation of Property – Clarify that in event of unit expropriation their percentage of interests/ expenses/voting rights are to be distributed proportionately among the remaining units. - <b>Adopt as proposed.</b>
35	Agreements of Purchase & Sale [APS] – Increased disclosure of information in APS including on warranties, engineers’ certificates, structural details, etc. - <b>Role of engineers and architects fall under the mandate of the New Homeowner Protection review; others would be turned over to the Corporation under the provisions of Section 17 of the Act.</b>
36	(New) Fees – Add missing fee elements such as fees on consolidation of units, amalgamation of corporations, addition of a unit, common elements condominium corporations, and termination. - <b>Agreed as the amendments would cover off gaps in existing fee structure.</b>
37	Estoppel Certificates – Adopt requirement to include disclosure of issues that may result in special assessment in the next 12 months on the certificate. - <b>Agreed.</b>
38	Require inclusion of two years’ annual general meeting and board of directors minutes. Information to be included with the estoppel certificate. - <b>Agreed.</b>
39	Access to Arbitration Decisions – Permit disclosure of arbitration decisions to interested persons. - <b>Conflicts with privacy legislation and the privacy requirements in the Commercial Arbitration Act. Therefore no action is available.</b>

<b>Issue ID #</b>	<b>Issue</b>
40	<p>Reg 57(3) – Reword regulation subsection to provide clarity. Currently regulation states “a notice of termination in Form 11 may be accepted for registration notwithstanding that it does not contain the pro tanto releases of dower in accordance with that form.”</p> <p>Pro tanto means “only to that extent” in Latin.</p> <p><b>- Amend regulations to contain wording like “Any termination will contain matrimonial affidavit of status and unreleased spousal interest is disposed of in accordance with the Matrimonial Property Act.”</b></p> <p><b>- Clarifies and inserts plain meaning into the subsection.</b></p>
41	<p>Contents &amp; Approval of Description – Percentage required to amend a description (51 per cent) is in conflict with percentage to sell the property (80 per cent) and amend the declaration (80 per cent).</p> <p><b>- Standardize percentage by requiring vote to be 80 per cent. See also detailed issue discussion for Issue 4.</b></p>
42	<p>Objects and Powers of Corporation – The Act should allow for units to be unconsolidated, not just consolidated (a corporation should be able to undo a consolidation of units).</p> <p><b>- Amend Act to allow a unit consolidation to be reversed.</b></p>
43	<p>Financial Provisions – Amend the investment guidelines for reserve funds based on the idea that the principal amount is to be protected.</p> <p><b>- Insert amended wording to the effect that “reserve funds may only be held in investment vehicles that guarantee 100 per cent of the principal amount invested.”</b></p>
44	<p>Unit and Common Areas Insurance – Increased regulation on when an insurance trustee should be retained and who can be an insurance trustee.</p> <p><b>- Insurance companies have different requirements about trustees. The Act currently allows for insurance trustees or not as the corporation desires. No change to the Act is required.</b></p>
45	<p>Sale of Property – Clarify that the claims and interests in the land existing before registration are then effective and the claims against the property or common elements applicable after registration which are then extinguished are applicable only on the portion of the land that is no longer governed by the Act, not on all of the land.</p> <p><b>- Reword subsection 40(3) to clarify intent of provision.</b></p>
46	<p>Units and Common Interests/Duties of Corporation – Amend Act to permit board or assigns to enter a unit to enforce declaration or bylaws, to remove property as appropriate and destroy on notice to unit owner.</p> <p><b>- This item was rejected for liability and on constitutionality issues. It is possible that the Charter of Rights is violated if searches without a warrant are carried out. Further, these actions could expose the board of directors to litigation and other risks should, for example, the property removed/destroyed not belong to the unit owner or is already acting as collateral security to a debt. Moreover, entering a unit would, in essence, give the corporation the benefit of recourse when it felt a contravention had occurred that would not be similarly granted to the individual unit owners.</b></p>

Issue ID #	Issue
47	<p>Voting Requirements for Changes in Common Elements or Assets – The Act says “the corporation, by a vote of members who own 80 per cent, or such greater percentage as is specified in the declaration, of the common elements, may make any substantial addition, alteration or improvement to or renovation of the common elements.” The term “substantial” is not defined and this can cause confusion and disagreement.</p> <p><b>- Amend Act to define “substantial” as being 25 per cent of the appraised value of the development.</b></p>
48	<p>Arbitration &amp; Enforcement – Should the Act be amended to specify which enforcement issues go to court so as not to conflict with the provisions of the established arbitration process for circumstances such as the failure to conduct business if a dysfunctional board?</p> <p><b>- No action is required. If any one of the parties to a dispute, if the dispute is between persons referenced in 33(2)(a)to(f), and relates to any matter under the Condominium Act, chooses to enter into an arbitration agreement, any court action that has been commenced must be stayed for the arbitration process to take place.</b></p> <p><b>- If a third party, not mentioned in the above-mentioned sections, is a party to the dispute, a court resolution may be more appropriate.</b></p>
49	<p>Board of Directors – Possibility of board dominated by declarant.</p> <p><b>- No action is proposed as we have recommended amendments to ensure that the declarant cannot contract to purchase or arrange a mortgage for the purchase of more than one unit unless more than 50 per cent of the units have been conveyed and a vote of the unit owners representing 80 per cent of the common elements in favour of doing so has been achieved as well as limiting the term of contracts entered into by the declarant on behalf of the board to two years and provisions to cancel those within 60 days, the matter of “control” has been addressed in respect to the most significant issues that could arise. Furthermore, Section 15 of the Act provides for proportional representation when the declarant continues to own units in the development.</b></p>
50	<p>Arbitration – Proposal to extend the application of the arbitration provisions of the Act so that they cover disputes between the corporation and declarant.</p> <p><b>- Proposal rejected. As the scope of the issues that arbitrators would addressing would be changing significantly from only matters under the Condominium Act to all matters including contract, the fee structure prescribed for the arbitrators would require revisiting. Arbitrators are not likely to be willing to accept assignment of matters to be heard that could be significantly complex under the current fee structure. Furthermore, by including these more complex matters, the proceedings will become far more formal in nature and would more closely represent a court proceeding. The jeopardy of including the declarant is that the “new” fees structure would likely be significantly higher if these more complex matters were to be added, which would result in significantly higher fees for the “standard” matters relating to the Act as well.</b></p>
51	<p>Poor Construction.</p> <p><b>- Item was addressed under Homeowner Protection Review</b></p>

**Issue  
ID #**

**Issue**

- 
- 52 Unit & Common Areas Insurance – Once a unit has been bought and re-sold, a new owner may not know what came “standard” with the first purchase, and what were improvements. This may result in inadequate insurance coverage for the owner.
- Amend the Act to include provisions to require that the declarant include in the declaration the specifications as to what constitutes a “standard unit” as described in the schedule contained in the corporation’s declaration. Do not require existing declarations to be amended, rather existing corporations would have the option to amend their declarations.**
- 
- 53 Location of Service Easements – Some proposed corporations, especially ones located in rural areas of municipalities that do not have central services, may wish to have their declarations accepted for registration notwithstanding the fact that not all services (such as water and sewer) relocated on what will become the condominium common parcel. Rather, the services will be located off-site, accessed by easements.
- Amendments should be made to require that, in the event that a property is not municipally serviced and services, such as but not limited to water and sewage, are not contained within the perimeter of the property, appropriate easements and supporting agreements of terms and conditions regarding operation/maintenance be registered (to run with the land) and disclosure be made in the declaration and in the agreement of purchase and sale of a unit that the services are not contained within the boundaries of the property and any agreements respecting the terms and conditions are be contained in the declaration as an appendix.**
- 
- 54 “Seeding” Reserve Funds on Conversion – Declarants should be required to put money in reserve funds if they are converting an existing building to condominium status.
- Seeding is not recommended. The independent reserve fund study, which is now being recommended for all conversions, will provide prospective purchasers with an arms length assessment of a building’s condition, including a schedule of anticipated repairs and costs. The study would provide protection to prospective buyers by being both a disclosure and a negotiating tool, similar to inspection reports used in the sale of conventional homes. Moreover, a process to determine and monitor seeding contributions would be administratively difficult/complex. The whole study should be provided and a cooling off period of 10 days should be permitted after it has been provided.**
-

## APPENDIX "B"

**Condominium Ownership and Governance: A Primer<sup>6</sup>****What is a condominium?**

The term "condominium" describes a type of property ownership rather than a physical structure or style of building. Residential condominiums can be high-rise or low-rise apartments, townhouses, detached houses, stacked townhouses—any type of housing you can imagine. What makes them "condominiums" is not their physical structure, but the way owners have agreed to share ownership of common property (common elements), while keeping individual ownership of their own units.

Condominium ownership is not limited to residential property. Some commercial, recreational, and mixed use properties and bare land developments are condominiums as well. Within the individual unit, the condominium owner is in much the same position as anyone who owns a single-family dwelling. An owner has exclusive use of the property and must pay all costs associated with its operation and maintenance. The owner is also responsible for a portion of the costs of maintaining all the common elements in the corporation.

**How is a condominium set up?**

To create a condominium, a "declarant," usually the developer and vendor of the units, submits a number of documents, including a "declaration" and "description" of the property to the provincial Registrar of Condominiums. The Condominium Act sets out how this should be done. When these documents are registered, a legal entity called a condominium corporation is created. The Registrar makes sure there is continuing compliance with the legislation but does not participate in the day-to-day operations of condominium corporations or in subsequent sales of individual condominium units.

The primary purpose of the condominium corporation is to manage the condominium property and business affairs. The members of the corporation are the owners of the units. Some of the corporation's duties include:

- managing and maintaining the common elements
- establishing a fund for the payment of common expenses
- making sure that a reserve fund study is undertaken and that the appropriate fees are contributed to the established reserve fund to replace major capital items, such as the roof or elevators
- preparing the annual budget and assessing and collecting owners' contributions to these funds
- paying common expenses
- adequately insuring its liability to repair the units and common elements
- holding annual meetings of owners
- appointing an auditor (where there are 10 or more units) and filing an auditor's report and financial statements with the Registrar
- making sure that the owners comply with the Condominium Act, the declaration, and the bylaws
- keeping adequate records

**Who owns what?**

The division of ownership is set out in the condominium corporation's declaration. Basically, an owner owns a unit and a specified percentage interest in common elements, as set out in the declaration.

<sup>6</sup> From Service Nova Scotia and Municipal Relations, Consumer Information: Buying a Condominium, which can be found at [www.gov.ns.ca/snsmr/consumer/condo.asp](http://www.gov.ns.ca/snsmr/consumer/condo.asp).

The contents of the declaration and description of any two condominium corporations are not the same. Areas designated as common elements in one condominium corporation might belong to an individual unit in another. In some condominiums, the common elements begin at the exterior wall of the individual units; in others, the exterior wall of the individual unit is considered part of the unit. Such small distinctions can mean a lot when it comes to a question of payment for items such as window-washing service or repairs to the exterior brick of a condominium townhouse.

A residential unit usually consists of the premises in which the owner actually lives. These premises are the property of the owner, who is responsible for their upkeep and maintenance.

## Operating a condominium corporation

When a majority (51 per cent or more) of the units have been sold, the declarant or developer stops managing the affairs of the property. The owners take over responsibility for the condominium corporation and run it according to the declaration and bylaws. The following must be provided to the corporation by the developer at that time:

- the corporation seal and minute book containing copies of the declaration and bylaws
- copies of any agreements entered into by or for the corporation
- any warranties or guaranties for equipment, etc.
- all survey, architectural, and structural plans for the project
- financial statements, the reserve fund study, and the reserve fund account for the condominium
- a list of all units sold, unsold, or rented in the property

The board of directors is responsible for making sure requirements of the declaration and bylaws are satisfied, overseeing the management of the corporation, and making sure that the corporation's bills are paid. How often the board meets will depend on what business needs to be transacted, but can also depend on emergency situations, such as a wind-damaged roof or a fire that requires immediate action. The board must hold an annual meeting of the owners and, if the building has 10 or more units, must appoint an auditor. The term that board members will serve is set out in the corporation's declaration or bylaws.

## What is a reserve fund study?

A reserve fund study is an assessment of the components of a building's common elements and determines a funding plan to meet the costs of repair and maintenance of the components over time. Part K of the regulations made under the Act deals with reserve fund studies, including

- what a study must contain
- who is qualified to conduct it
- its components
- the time period to be covered
- definitions of terms used
- other information to be provided as part of the study

Small condominiums of less than 10 units are not required by the Act to have a reserve fund study completed by a person qualified to conduct these studies under the Act; however, some smaller corporations voluntarily have a study done as part of their planning process. The Act requires that such corporations maintain a reserve fund balance of no less than 10 per cent of their annual budget or a greater amount as stipulated in the corporation's bylaws.

## Condominium insurance

Insurance on the entire condominium development is the responsibility of the condominium corporation. The corporation should place “all risks” property insurance coverage on the units and the common property. It is standard practice that the corporation maintains errors and omissions insurance for the board members. Ask to see it. Consider checking the policy for exclusions. You may want to find out if the insurance covers the replacement cost of the units and the common property. Your portion of the cost of the insurance purchased by the condominium corporation is usually included in your monthly condominium fees. Check this with the condominium corporation. You will need to buy your own insurance for the contents of your individual unit and any improvements made to it. You should also have insurance to cover personal and occupiers’ liability. Ask your insurance agent for more information.

## Advantages and disadvantages of condominium ownership

### ADVANTAGES

- It makes private ownership possible in areas where land values would ordinarily make this prohibitive, such as close to downtown.
- An individual unit owner is not generally responsible for day-to-day maintenance often associated with home ownership, since exterior maintenance of the units, painting, snow removal, and landscaping are the responsibility of the corporation and are paid for through the common elements fees. Maintenance is usually carried out by a manager or under the direction of the board.
- Owners can vacation and travel knowing that the exterior of their property will be maintained while they are away.
- It lets the owner participate in decision making that affects the property.

### DISADVANTAGES

- Individual decision making gives way to decision making by the group of owners. You may not always agree with every decision.
- Community living can have its ups and downs, and your enjoyment of your property can be affected by your neighbours, the amount of noise or smells coming from their homes, and their backyard activities; even parking can become the source of disagreement.

## What should I know before I buy?

Before you buy a condominium unit, you should get copies of the declaration, bylaws, common elements rules, the reserve fund status certificate, the estoppel certificate, and the audited financial statements and review them. Besides the questions common to the purchase of any property, you should know the answers to the following:

- Does the declaration prohibit any particular occupation or use of the units? Common examples are the prohibition of pets and of conducting a business from the unit.
- Is the project registered as a condominium corporation? If not, when is registration anticipated?
- How many of the units are sold? Owner occupied? Rented?
- If the unit is presently occupied by a tenant, how much notice to quit is required by the Residential Tenancies Act?
- Has a reserve fund study been conducted? Is the corporation’s budget and financial status in keeping with the recommendations of the study?
- What is the reserve fund balance?
- Are any major renovations or repairs anticipated?
- How much are the common elements fees? What expenses do they cover?
- Is the corporation self-managed or managed by a professional management company?

## What is an agreement of purchase and sale?

This is an agreement between the purchaser and the seller of property that states the specific terms of the purchase. In most cases, a standard agreement form for condominiums is provided by the Nova Scotia Real Estate Commission.

Before you sign any agreement of purchase and sale, take it to your lawyer to review its terms and the provisions of the documents to make sure that you are properly informed and your rights are protected.

## What should the agreement contain?

If the agreement concerns a proposed unit or if the declarant (developer) is the vendor, it should include

- a copy of the survey plans showing the perimeters of the land and building(s)
- the shape, boundaries, and location of the unit, and the common elements
- a copy of the declaration, bylaws, and common elements rules

If the unit is incomplete, your agreement should include confirmation of the completion date.

If the unit is not yet registered, specify that your offer is based on the documents (draft declaration and description) forming part of your agreement of purchase and sale and is conditional upon the registration of the unit under the Condominium Act before the closing date.

If the unit is in a phased-registration development, you should receive information in addition to the above noted, including

- a description of the overall plan of the development
- a statement that the declarant is not required to create any other phases
- a statement setting out the estimated registration dates of subsequent phases
- a statement that sets out, for each anticipated phase, the approximate location of the buildings/structures, the approximate number of units, the proportions of ownership, voting and contributions to common elements expense fees that exist for each unit after the phase is registered, and a schedule of when any common facilities will be available

If you are interested in a resale unit, make sure that your offer is conditional upon you receiving an estoppel certificate (see the definitions).

## What if I change my mind after signing an agreement?

Consult your lawyer. If the unit is a new one and the agreement is between you and the declarant, you are entitled to receive information about the survey, design plans of the condominium, the declaration, bylaws, and common elements rules and regulations of the corporation. You have five days, or the amount of time specified in the agreement, during which you may change your mind if anything contained in these documents materially affects your enjoyment of the property and you and the vendor are unable or unwilling to rectify the matter or waive the objection.

You must rescind your offer in writing and it must be in the hands of the vendor within the five-day "cooling off" period.

## What can I do in my unit?

You can do anything in your unit that you can do in a private home, subject to the rules and bylaws of the corporation. Usually the unit owner is forbidden from any actions that could threaten the project's insurance coverage or cause inconvenience to or interference with other unit owners.

## **Can I rent my unit?**

Yes. You must notify the corporation of the rental and provide the tenant(s) with a copy of the corporation's declaration, bylaws, and rules and regulations. The tenant is obligated to comply with the Condominium Act and the corporation's declaration, bylaws, and rules and regulations, and it is the unit owner's responsibility to make sure they do.

## **What if...**

### **...MY UNIT IS DAMAGED BY FIRE OR FLOOD?**

It is the corporation's responsibility to insure and repair the unit. However, this does not include its contents or any improvements.

### **...THE STRUCTURE IS DAMAGED BY FIRE OR FLOOD?**

It is the corporation's responsibility to insure, maintain, and repair the common elements which usually includes the structure except improvements to and contents of units.

### **...THE UNIT NEXT DOOR IS RENTED TO TENANTS WHO ARE DISRUPTIVE?**

First, address the problem with the corporation and the person who owns the unit, preferably in writing.

If the corporation and the unit owner are not prepared to take action against the tenant, or they are unable to effect compliance, you will be able to proceed against the occupier of the unit through the arbitration process available under the Condominium Act.

### **...I AM UNHAPPY WITH THE WAY THE CONDOMINIUM IS BEING MANAGED?**

If your concerns are about the building manager, go to the board of directors with your complaints and suggestions for improvement.

If you are unhappy with the board of directors, ask to review their records and the (audited) financial statements. Board members should be cautious in their decisions and should seek out legal advice and other professional advice when making long-term decisions that may involve large amounts of money. Board members are elected for a term, so they can be removed by a majority vote of members at a meeting called for that purpose.

Complain in writing and try to be reasonable. If you feel that the board is not taking any action on your complaints, you can make application to have the matter resolved by arbitration. The procedure for doing this is outlined in the Condominium Act. It should be noted that most corporations have liability insurance to cover the board for any errors they may make.

### **...MY CONCERNS ARE NOT ADDRESSED OR I HAVE ISSUES WITH THE BOARD OF DIRECTORS?**

The arbitration process under the Act is available to address various types of issues that may arise in condominium living. Information about this process is available from the Registry of Condominiums.

## Can I...

### ...MOVE INTO MY UNIT BEFORE CONSTRUCTION IS COMPLETED?

You should consult your lawyer about this. Before you move in, make sure there is an occupancy permit for your unit and make a list for the developer of any items that need to be corrected and/or completed.

### ...PAINT THE INTERIOR OF MY UNIT?

Yes, as long as the appearance of the building or exterior is not affected.

### ...MOVE INTERIOR WALLS IN MY UNIT?

Only with the written permission of the corporation. There is usually a process in place for you to obtain the required permission.

### ...PLANT A GARDEN IN MY "EXCLUSIVE USE" LAWN?

Only with the written permission of the corporation.

### ...INSPECT CORPORATION RECORDS?

Yes, on reasonable notice and at a reasonable time. There may be a reasonable fee charged for copying documents.

### ...ATTEND ANNUAL MEETINGS?

Yes. The corporation must advise owners of meeting details.

### ...GET EXTRA PARKING SPACES?

If there is room, but you will usually be charged an extra monthly fee.

### ...REFUSE TO PAY MY SHARE OF THE COMMON ELEMENTS EXPENSES?

No. You are obliged to pay your common elements fees. If you don't, the corporation may obtain a lien against your property for the arrears. The lien ranks in priority to your mortgage and may affect your relationship with your mortgage company. Interest may be payable on overdue accounts and any costs to collect outstanding fees may be your responsibility. If you have a problem, advise the property manager or board of directors. If it is unresolved, bring it up at the next meeting or request that the matter go to arbitration.

### ...BECOME A BOARD MEMBER?

It is in your best interest to take an active role in the operation of your corporation. If you are prepared to become a director of your corporation, make it known to the present board and other unit owners. Advise them of your qualifications/interest.

The board of directors takes responsibility for managing the condominium property and its business affairs. Being available and having a genuine interest and a business background are definite assets for directors.

The Condominium Act specifies certain duties for the board including compliance with the Act, the declaration, the bylaws, and rules. In general, the duties and responsibilities of the board are carried out by a property manager, who is responsible for the day-to-day matters including the collection and disbursement of common elements fees. In the absence of a property manager, the board is directly responsible for these duties and responsibilities. For the protection of the condominium owners, the condominium corporation should have directors' liability insurance.

### ...CHANGE A BYLAW?

Yes, with the co-operation of other owners. A vote in favour of the change by those owning at least 60 per cent of the common elements is required to approve or amend a bylaw. It should be noted that the amendment or new bylaw is not in force until registered with the Registry of Condominiums.

## **How do I sell my unit?**

You sell your unit in the same way you would sell any other kind of real property. It would be wise to keep your original documentation and any subsequent amendments so that you can pass it along to the new owner.

## **Owner's Rights and Responsibilities**

- Exclusive possession of the unit
- The responsibility to maintain the unit
- The right to vote in matters concerning the condominium corporation
- The right of access to common areas, subject to the declaration, bylaws, and rules and regulations
- The responsibility to pay common elements fees
- The responsibility to participate in governing the condominium corporation

The Registry of Condominiums is available to respond to questions about the Act and regulations and condominium living issues. They may be contacted at 424-5580 or 424-5758.

## **Some Definitions**

Some of the terms used to describe condominium ownership may be unfamiliar or have special meaning. Here are definitions of some of these terms.

### **Board of Directors**

Each condominium corporation is managed by a board of directors who are unit owners and who are elected by the owners. There must be a least three directors, although a greater number may be required by the declaration or, in older corporations, the bylaws, which may also set out required qualifications, method of election, and term of office. In general, the board is responsible for the upkeep and maintenance of the building(s) and other business matters, usually by supervising the actions of a property manager.

### **Bylaws**

Bylaws are rules that state how the condominium will be run, how the property will be maintained, and how the common elements will be used. Bylaws are made, and can be changed, by owners who own 60 per cent of the common elements.

### **Common Elements**

Common elements include the property remaining after the boundaries of the units have been defined. They are owned in common with all other unit owners and are for their mutual use and enjoyment, e.g., hallways, elevators, mechanical equipment, lawn, swimming pool, etc.

### **Common Elements Fees**

Common elements fees are the monies paid each month to the corporation by the unit owners. The corporation's budget indicates how much money is required to meet daily operating costs plus contributions to the required reserve fund. Unit assessments are made on the basis of the percentage allocated in the declaration, usually contained in a schedule attached to the declaration.

### **Common Elements Rules**

Common elements rules are simply rules for the use of the common elements, e.g., the number of guests you can have in the pool, at what time, and on what days.

### **Condominium Unit**

A unit is the part of a condominium property that is to be individually owned and occupied. Its precise boundaries are set out in the declaration and description. Before you buy a condominium, the declaration and description should be read carefully by you and your legal advisor.

### **Declaration**

The declaration outlines the division of ownership within the condominium corporation. It defines the units and common property (common elements) and specifies the interest each owner has in the common elements. The size of the unit usually determines the interest that the owner of the unit has in the common elements, although this is not necessarily the case.

### **Description**

The description details the layout and location of the whole development. It includes a survey of the land and building(s) and detailed architectural drawings of the construction of the building(s) and each unit.

### **Estoppel Certificate**

An estoppel certificate is a binding statement prepared by the corporation at the request of a unit owner or purchaser. It indicates the standing of common elements fees and reserve fund assessments against the unit, whether they are up to date, paid in advance, or in arrears. The Condominium Act and Regulations specify which items must be included. For example, the certificate will also contain such items as the names and addresses of the property manager and the officers of the corporation, the financial standing of the corporation, the reserve fund balance, whether any major capital expenditures or increases in fees are planned, and if there are any law suits pending against the corporation. A copy of the most recent declaration and bylaws are to be provided with this certificate.

### **Limited Common Elements**

Also known as “exclusive use common elements,” they are portions of the common property that are designated for the sole use of one or more unit owners, e.g., balconies, patios, parking (in some cases), storage lockers.

### **Property Manager**

The property manager is an employee of the corporation who is responsible for the day-to-day management of the property, which may include the collection and disbursement of common expense monies. The specific duties of the property manager should be contained in a written contract. Some condominium corporations may not have retained a property manager and are often self-managed by the board of directors.

### **Reserve Fund**

The reserve fund is probably the single most important factor in the long-term financial stability of a condominium corporation. An adequate reserve fund protects the future of the condominium by making sure that sufficient money is set aside for major repairs and replacements as they become necessary, e.g., roofs, roads, landscaping, building exteriors, parking facilities, hallway carpets.

The Condominium Act requires every corporation of 10 or more units to have a reserve fund study completed. This study assesses the components of the common elements and develops a financial plan for the repair and maintenance of the components based on projected life of the items and anticipated cost of repair/replacement and their current condition.

### **Special Assessment**

A special assessment may be levied by a corporation in response to an unforeseen major expense that cannot be covered by the reserve fund when unit owners representing 66 2/3 per cent of the common elements vote in favour of the assessment.





