

Condominium Act Review:

RESPONSE BOOKLET

DEADLINE: FEBRUARY 13, 2009

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ISSUE 1

Conversion of Small Buildings/Reserve Fund Studies

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.

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

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.

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

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.

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

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 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.

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

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.

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

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.

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

Proposal:

Add provisions for common elements and recreational condominium corporations.

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

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.

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

Proposal:

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

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

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) or confirmation that the units are responsible for establishing and maintaining their own services and utilities.

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

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).

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

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.

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 & Amenities by Declarant

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.

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

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.

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

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.

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

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.

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

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.

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

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.

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

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.

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?
