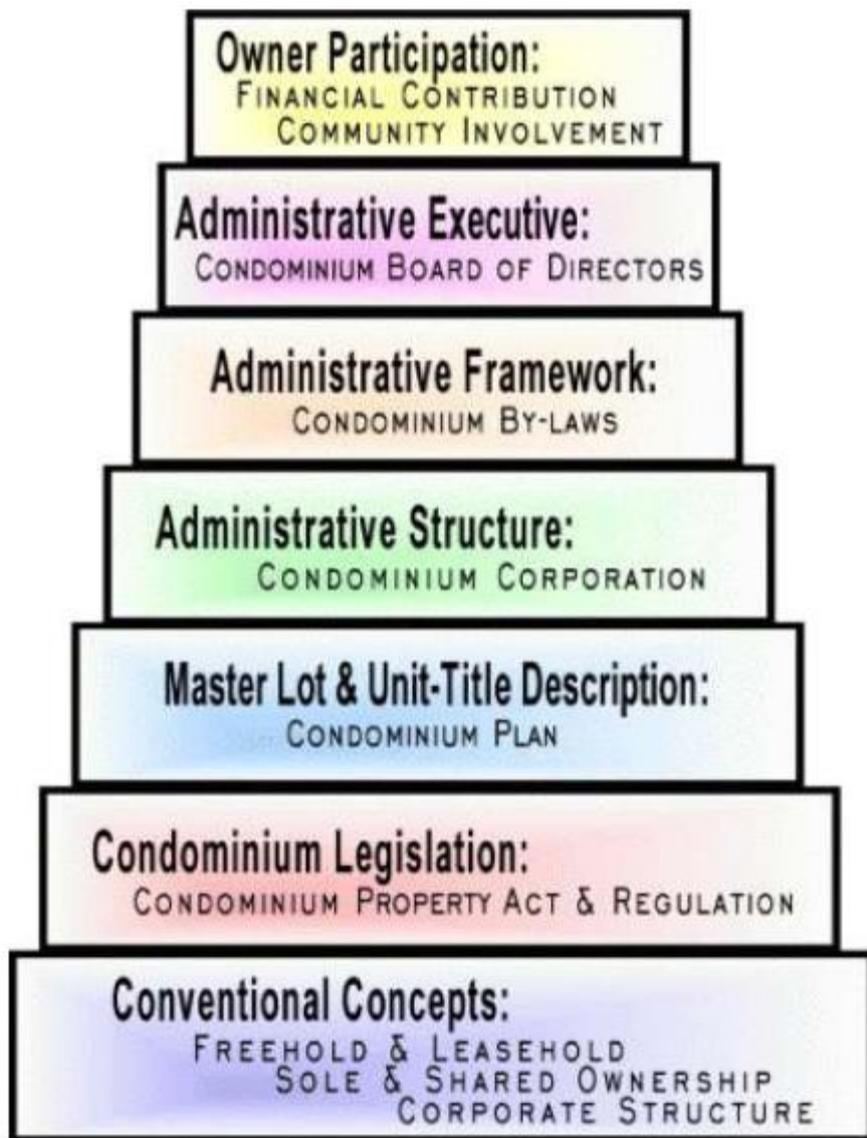


CONDOMINIUM OPERATIONAL AUTHORITY PYRAMID



OWNER PARTICIPATION - COMMUNITY RELATIONS

A condominium board and its committees can do many things to foster the unit-owners' appreciation of their respective rights and responsibilities. By promoting understanding, the project's mini-government will greatly enhance the likelihood of community success and harmony. People who choose to live in condominium do so because of its mutual benefits. But, these benefits exist only because owners accept both a shared environment and shared responsibility for its financial well-being. Co-operation and communication are, therefore, crucial. Regular communication, newsletters, and unit-owner committees are important components. People who buy units without fully informing themselves of existing rules and restrictions are, regrettably, a recurring source of conflict. Often, their claims for exemption attempt to deflect blame to representations by sales agents or previous owners. In most cases, however, the rules at issue are clearly articulated in documentation the purchaser reviewed and accepted. Whether the owner is forced to adjust expectations, decides to sell and move, or attempts to challenge the rule in court, the situation invariably leads to conflict and hard feelings. Prospective purchasers often have lifestyles involving a particular passion, business or hobby. Sometimes, these activities infringe upon the rights or require the accommodation of neighbors, or violate architectural

guidelines for common property. Obviously, anyone who falls into this category should verify in writing his or her right to such activity. Pets of any kind; extra parking; barbecues; musical performances (live and recorded); motor homes and motorcycles; home crafts involving noisy machinery; antennae; and permanent alterations to exclusive-use areas are some examples.

ADMINISTRATIVE EXECUTIVE - THE BOARD

Every condominium must have an elected executive — the *board*. Charged with enforcement of community by-laws, the board exercises its powers in performance of the corporation's responsibilities, as outlined in the Act and Regulations. Duties include:

- Exercising and discharging the duties of the office of a board member honestly and in good faith;
- Declaring a material interest in any agreement, arrangement, or transaction to which the corporation is or is to become a party, not voting in respect of any such matter, and not being counted when determining a quorum for such a vote;
- Obtaining and maintaining insurance on buildings, common facilities and insurable improvements to *full replacement value*, and all other coverage required by regulation;
- Keeping the common property and other assets in a state of good and serviceable repair and maintenance;
- Complying with notices and orders of any municipal or public authority;
- Filing at land titles, in prescribed form within 30 days of the conclusion of an annual general meeting, the names and addresses of the board members;
- Establishing a fund for administrative expenses sufficient for the control, management, and administration of the common property;
- Establishing and maintaining a capital replacement reserve fund;
- Raising necessary operating and reserve funds by levying contributions on owners in proportion to unit factors (or, if provided for in the by-laws, on a basis other than that of the unit factor);
- Retaining a "qualified person" to carry out a reserve fund study of the depreciating property to determine the funds necessary for the reserve fund;
- Approving a plan, based on the reserve fund report; for providing for sufficient funds to be collected through owners' contributions, and providing them copies of the approved plan;
- Convening an annual general meeting, once a year, within 15 months of the conclusion of the preceding meeting;
- Preparing financial statements, in accordance with generally accepted accounting principles, for the previous financial year, and an annual budget for the following year ;
- Distributing copies of the financial statements and annual budget to the owners; Providing to any owner, purchaser or mortgagee making a written request, a copy of an insurance certificate within 10 days, and/or a copy of the policy within 30 days;
- Permitting, upon 10 days written notice, inspection by a mortgagee of the management or administration records of the corporation, and/or minutes of board meetings and general and similar meetings of the owners.
- At least 2/3 of the board members must be unit owners or mortgagees unless the by-laws provide otherwise.

ADMINISTRATIVE FRAMEWORK - BY-LAWS

By-laws are considered a contract to which every unit owner is an informed and willing subscriber. They establish a detailed framework for operating a project. And, as a contract between unit owners, the condominium corporation and the board, they define the powers, rights and responsibilities of all parties. By-laws deal with

- Duties of the unit owners (typically, unit and privacy area maintenance, compliance with rules and regulations, payment of contributions, etc.)

- Duties of the condominium corporation and its board — i.e., managing the common property; maintaining, repairing, and replacing service components; collecting unit-owner contributions to operating costs; establishing and maintaining replacement reserves; insuring units and common property; etc
- Powers of the board; (i.e., to borrow funds; invest contributions; assign privacy areas; make rules and regulations; hire staff and professional services; etc);
- Composition of, election to, and removal from the board;
- Convening and conduct of meetings; voting procedures; appointment of managing agents; maintenance of records; financial statement preparation and delivery; etc;
- Enforcement of by-laws and collection procedures; and, Standards (behavioural and architectural) regarding noise, signage, pets, laundry, storage, parking, electrical and mechanical systems, etc.

By-laws may create the impression that condominium is a brave new world constructed around constraint and control. But like their role in commercial corporations, condominium by-laws simply provide a framework for proper administration of a shared investment. Alberta's statutory by-laws include a set of common-sense house rules. Although they may be fine-tuned for a particular development, these use restrictions represent a basic good-neighbour set as an example of what to expect in any well-organized project:

ADMINISTRATIVE STRUCTURE - CONDOMINIUM CORPORATION

Each condominium community is a self-governing, shared-property enterprise. While it may be organized and administered under a corporate structure, it is not governed by the *Business Corporations Act* or the *Companies Act*. Condominium corporations are created under the *Condominium Property Act* upon registration of a plan. Yet, they have many of the artificial-person, ongoing existence features of business corporations — including authority to represent the owners in matters of community interest. They can sue and be sued. They do not, however, enjoy the limited liability of commercial counterparts. Contrary to popular myth, the **condominium corporation does not own the common property**. As part of their individual titles, common property is owned directly by the unit owners in undivided, tenancy-in-common shares. The corporation exists, however, to control and manage the common property, enforce the by-laws, and administer the condominium arrangement in the best interest of all owners. By-laws direct the conduct of this shared-property business; the board is its democratically elected executive. *Appendix 1* of the *Condominium Property Act* prescribes by-laws that come into effect when a condominium plan is registered. However, these are considered minimal and generic, and are usually not site-specific enough for proper administration. Consequently, it's normal for a good developer to immediately replace the statutory by-laws with a more appropriate set.

CONDOMINIUM PLAN

The next level up the authority and organizational pyramid — the one that plays the most important defining role regarding what it is exactly that you own, or will own — is the survey description of the condominium master lot and its units, together with other specified information, that's registered at Land Titles. The constitutional cornerstone of every condominium community is its permanent public record — the **condominium plan**. The document is not, however, a narrative "plan" — one that outlines goals or a scheme of action. Rather, it's a detailed graphic portrait of each development's physical and proprietary architecture. Condominium projects can range from duplexes to extensively-serviced master lots containing hundreds of units — often involving a mix of residential, commercial, and other applications. Within a multi-unit environment, each unit owner receives title to a desired combination of exclusive space, location, construction quality, security, and amenities. For successful conflict-free operation of this ownership mosaic, where one domain ends and another begins must be clearly articulated. Since modern documentation

techniques permit unambiguous definition of air-space segments of land lots and the structures they contain, the plan is able to describe how use and enjoyment rights to the whole condominium property are assigned. Consequently, one part can be owned and used by all unit-owners collectively; an adjacent part owned and used by one or more parties exclusively; and another part owned by all, but with use restricted to occupants of one or more units. Upon registration with the applicable Land Titles Office, a project comes into legal being with condominium titles being issued in place of the old single title. As a result, the relationship of these individual titles is memorialized. The 2000 Act now permits the amendment of condominium plans. A special resolution of the corporation and Court approval are required. The procedure, categories of amendment, and criteria are detailed in the *Condominium Property Regulation*. The condominium plan contains a great deal of information. It describes the perimeter of the master lot, the location of buildings, if any, and the **unit boundaries**. Units are identified by consecutive numbers from 1 in the first phase to the last unit in the last phase. If adjacent parcels amalgamate, the amalgamating plans are assigned consecutive letters. The plan also sets out the respective unit factors, the basis for their determination, and each unit's approximate floor area — or land area in the case of bare-land condominium. Plans are identified by a **7-digit registration number** (except for those registered before 1974, which have a 3-letter, consecutive digit format), which is assigned when registered at a land titles office.

CONDOMINIUM PROPERTY REGULATION

The *Condominium Property Act Regulation* is a set of implementation rules, the scope of which is articulated in the *Condominium Property Act*, and for which creation authority is vested in the Minister responsible for its administration. With the September 1, 2000 revisions, the role of the regulations was significantly expanded — to the point where it comprises almost 40% of the size of the Act and Regulation combined. With its provisions and directives, the Regulation governs:

- a) Registration of condominium plans and other condominium documents;
- b) Capital replacement reserves, funding plans, studies by qualified persons, reports, maintenance, reviews, and access to the plan and reports;
- c) Phasing procedures, disclosure, registration, sale, & board control transfer;
- d) Amalgamation, modification, and amendment procedures for condominium plans;
- e) Insurance requirements with respect to perils and coverage amounts;
- f) Requirements and application rules for purchaser protection programs; and
- g) A variety of miscellaneous and transitional provisions.

For many buyers and owners, this may be as much as you care to know about the legislation at this point. But, if you become a board member, as many Owners will, the Act and Regulation will likely find their way into your library.

CONDOMINIUM PROPERTY ACT

The statute establishes documentation and disclosure requirements for the creation of condominium, and imposes an administrative framework upon the community of owners. In Alberta, the elected executive is now called a *Board of Directors*. In governing condominium for the benefit of owners, the Act:

- a) Defines and interprets terms and concepts as they apply under the statute;
- b) Details the content requirements of a condominium plan, and the documentation and registration process involved;
- c) Permits, in accordance with procedures articulated in the regulations, the amendment and modification of a condominium plan;
- d) Allows for, in accordance with procedures in the regulations, the development in phases of buildings or land in a condominium plan;
- e) Prescribes boundaries, both standard and optional, between units and common property;
- f) Details disclosure requirements providing protection for purchasers of both new and rental-conversion units;

- g) Creates easements for support and utilities;
- h) Provides for creation of a condominium corporation and an administrative board;
- i) Stipulates maximum delays for developers and boards to convene general meetings of the corporation;
- j) Establishes "standard", but replaceable, by-laws for the control, management and administration of the condominium, and provides for their enforcement;
- k) Defines the powers and duties of the corporation, the elected executive, and unit owners;
- l) Establishes standard insurance requirements;
- m) Defines actions that require special (75%) resolutions (e.g. amending by-laws);
- n) Provides for some corporation controls on individual-unit rentals;
- o) Provides for the control, use and disposition of common property, and the creation of exclusive-use areas;
- p) Provides authority for enforcement of common expense contributions;
- q) Appends an initial by-law set applicable to every condominium, until replaced;
- r) Prescribes requirements for notices (change of board, address of corporation, rental tenants, etc.); and,
- s) Establishes condominium termination and dissolution procedures.