

# New Legislation for Alberta Condominium Owners and Developers

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New rules for condominiums unit owners and developers in Alberta went into effect September 1. The Condominium Property Act and Regulation are the result of extensive consultations involving condominium owners, developers, condominium professionals and Alberta Government Services. The new Act, an update to the previous legislation, was passed in the Alberta Legislature in spring 2000.

"By working with our partners we were able to come up with a stronger Act and Regulation," said Government Services Minister Patricia Nelson. "The new legislation strikes a balance between the best interests of consumers and owners and the needs of developers by resolving some outstanding issues that had existed."

Some highlights of the Condominium Property Act include the following:

- Mandatory capital replacement reserve funds to provide for major repairs;
- Greater disclosure requirements for developers when in discussion with owners and buyers;
- Recognition of mediation and arbitration to resolve disputes other than court action; and
- New rules and requirements for developers of phased condominium projects.

## Background

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### The Condominium Property Act and Regulation

The Condominium Property Act and Regulation outline how condominiums operate and are managed in Alberta. In this regard, the legislation covers:

- the powers and duties of the corporation
- the division of responsibilities between the corporation and the unit owners
- budget and financial matters
- by-laws, including changing and enforcing by-laws
- reserve funds
- management agreements, rental of units, and insurance
- requirements for annual general meetings and board meetings.

### What is a condominium corporation?

The corporation consists of the owners of all the units in the condominium plan. A corporation is created when the developer registers the condominium plan at the Land Titles Office. The corporation is responsible for the enforcing its by-laws and

controlling, managing and administering the common property. The board of directors, elected by the owners, carries out these responsibilities on behalf of the corporation. The board reports to the owners at an annual general meeting or at an extra-ordinary general meeting.

## **By-laws**

Every condominium has a set of by-laws. When a condominium plan is registered, it may include the initial set of by-laws that govern the corporation. If not, the by-laws found in **Appendix 1** of the Condominium Property Act apply until replaced.

Owners can change the by-laws to suit their particular community by passing a motion to adopt the changes. All owners, and everyone occupying a unit, are bound by the by-laws of the corporation. **If there is a conflict between the by-laws and the Condominium Property Act, the Act applies.** The Act and specific by-laws give the corporation the right to impose sanctions, like fines, on owners who fail to comply with the by-laws.

## **Board of Directors**

Every condominium corporation has a board of directors elected by the owners. The by-laws outline how many directors are on the board, how often they are elected, and if there are any eligibility requirements. Directors are volunteers who have agreed to take on the responsibility of running the condominium corporation. Most often, these directors are unit owners who agree to serve on the board for at least one term. Two thirds of the members of the board must be unit owners or mortgagees, unless otherwise stated in the by-laws. The board conducts its business by holding regular meetings, usually monthly.

## **Reserve fund**

As of September 1, 2000, all existing and new condominiums are required to have a reserve fund to pay for the repair and maintenance of the common property. How much money will be needed, will be determined by a report called a reserve fund study. Every condominium corporation will have two years to obtain a reserve fund study and prepare and approve a plan for funding the reserve fund. If a corporation has conducted a reserve fund study in the past five years, the board must review the report and approve a reserve fund plan.

Some of the information required to be in the reserve fund study report is; the common property that may need to be repaired or replaced within the next 25 years; the present condition of the property and an estimate when the property will need to be replaced or repaired; an estimate of the costs of repair or replacement of the property; the life expectancy of the component when it is repaired or replaced and a recommendation on the amount of money, if any, that should be included in or added to the reserve fund

The reserve fund must be kept separate from the general operating fund of the corporation. It must be in a separate bank account in the name of the corporation or similarly in investments acceptable under the Trustees Act.

## **Phased development complex**

If a condominium complex is to be developed in phases, a phased development disclosure statement must be registered as part of the condominium plan. Some of the information included in the disclosure statement would be:

- a statement that the building or land is to be developed in phases
- the maximum and minimum number of units in the entire project
- a description of the units and common property included in the initial phase and subsequent phases
- a description of the proposed physical appearance of each phase and its compatibility with other phases
- the extent to which the developer will contribute to the common expenses during the development of each phase and the entire project
- the method to determine the allocation of administrative costs in each phase and for the entire project
- the basis for allocating unit factors
- the effect on the owners' contributions for administrative expenses and the corporation's budget if future phases are not completed.

Once the disclosure statement is registered, the developer cannot change it without the consent of 2/3 of the owners who are entitled to vote under the Act. However developers can make changes necessary to meet zoning and municipal development requirements.

If the developer cannot or will not complete the project, the developer, the corporation, the owners or other interested parties can ask the court to make any number of orders allowed under the regulations to deal with the land and the expected improvements to the common property.

## **Resolving Disputes**

If a condominium dispute cannot be resolved by speaking directly with the person involved or filing a complaint with the local condominium's board of directors -it can now be resolved using mediation and/or arbitration as an alternative to court action. (Regulation 69.1.(a))

Mediation and/or arbitration are processes that involve using an objective third party. A mediator helps the parties negotiate their own resolution to the problem. An arbitrator makes a decision after all the parties present their cases.

All those involved need to agree on the process and on a mediator or arbitrator. If they cannot agree on a mediator or arbitrator, the Alberta Arbitration and Mediation Society can appoint one for them. The parties involved pay the costs of the dispute resolution.

If an owner or any person who has a registered interest in a unit believes that there has been improper conduct by the developer, a corporation, an employee of a corporation, director or an owner, they may apply to the court to resolve the problem (Section 66 & 67 of the Act).

## **Dispute remedies**

The 2000 revisions articulate support for non-litigious remedies to disputes by providing that any such matter may, with the agreement of the parties, be dealt with by means of mediation, conciliation, or similar techniques to encourage settlement. If these attempts at dispute resolution are not successful, the matter may be put to arbitration.

Arbitration is a process of referring the facts of a dispute to an impartial person or persons chosen by the parties involved — who agree to abide by decisions taken. By confiding resolution to personally-chosen, knowledgeable arbitrators, the parties avoid the formalities, expense, delays, and adversarial environment of civil litigation. The Alberta *Condominium Property Act* does not define the process, but a previous British Columbia *Condominium Act* directed that arbitrators: 1) shall hear the issue as soon as possible at a convenient location; 2) shall conduct the hearing as they believe proper, allowing each party adequate opportunity to present and rebut evidence; 3) may accept evidence on oath, affidavit or otherwise; 4) may make whatever award they consider just and equitable; and 5) have the award entered into and enforced as if an order of the court.

Section 77 of the *Condominium Property Regulation* does, however, state that if the parties to the dispute are unable to agree on a mediator or arbitrator, the Alberta Arbitration and Mediation Society is, with the parties' agreement, authorized to appoint one.

\*The Canadian Condominium Institute estimates there are upwards of 6,000 condominium corporations in the province comprising in excess of 200,000 units and representing more than 400,000 Albertans.

\*\*Consumer tipsheets are available by calling 427-4088 or toll-free 1-877-427-4088 or by on the Government Services' website at: [www.gov.ab.ca/gs](http://www.gov.ab.ca/gs)