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## CONDOMINIUM OWNERS AND RESIDENTS' GUIDE

Audrey M. Loeb, LSM LL.B., LL.M., ACCI

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Audrey was awarded The Law Society Medal in 2008.

The Law Society Medal, established in 1985, recognizes outstanding Ontario lawyers whose service reflects the highest ideals of the profession.

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## **Condominium Ownership: What you need to know.**

**Audrey Loeb B.A LSM. LL.B. LL.M. ACCI**

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You are now an owner of a condominium unit in Ontario, the biggest condominium market in North America. This booklet is designed to help you understand what a condominium corporation is, how it functions and what laws and documents will apply and affect your rights and obligations as a unit owner and/or resident.

The term "Condominium" applies to a type of property ownership. It does not refer in any way to the physical structure of the building or building complex. Residential condominiums, which now account for one out of every three new homes built in Ontario, can be apartment style units (either high-rise or low-rise), townhouses, (some known as freehold condominiums), detached houses, stacked townhouses – any configuration of housing you can imagine. Non-residential condominiums can be industrial, commercial and/or retail. What makes them "Condominiums" is not their physical structure but the way in which owners have agreed to share the ownership of the common areas of the property, known as "common elements", while retaining individual ownership of the parts of the property which constitute their "units".

The condominium property is made up of units and common elements. Everything that is not specifically designated as a unit is known as common elements. Accordingly, condominium ownership has a dual nature; a condominium unit owner has freehold title to his or her unit and, at the same time, shares the ownership of the common elements jointly with the other unit owners. The unit owners share the costs of operating the property through the payment of their respective shares of the common expenses.

The *Condominium Act, 1998, as amended in 2015* by the *Protecting Condominium Owners Act (the "Act")* governs the ownership of both residential and non-residential condominiums in Ontario. This booklet is designed for the residential unit owner.

### **The Act is divided into several parts:**

- the Condominium Authority of Ontario ("CAO")
- the development of condominium corporations;
- the types of developments permitted;
- the sale of condominium units; and
- the ownership and governance of condominiums

### **What are the advantages of living in a condominium?**

There are many advantages to buying a condominium. Some of these are:

- It is sometimes more economical than comparable non-condominium housing.
- It enables people of moderate and middle incomes to own their own homes.
- It makes private ownership possible in areas where land values would ordinarily make this too expensive.
- It eliminates some of the problems of upkeep and maintenance often associated with home ownership, since the cost of maintenance and repair of the common elements is generally shared by all the unit owners and the responsibility of the condominium corporation through its property management.
- It allows ownership in a multi-unit property with each owner being responsible for paying his or her realty taxes and mortgage and an owner's failure to make any of his or her payments will not affect other unit owners.
- It gives the owners a right, in various ways, to participate in decisions which affect their homes.

### **What is a Condominium Corporation?**

A condominium corporation is a method of property ownership. It is not a business corporation. It is created solely to manage the affairs of the condominium corporation including the maintenance and repair of the buildings that form the condominium property. A condominium's affairs are regulated by the *Act* and documents known as the *Declaration*,

*Description, By-laws and Rules (collectively, the "Governing Documents").*

The *Declaration* is the equivalent of the constitution of the corporation. It outlines the division of ownership within the corporation by identifying the units, the common elements and the exclusive use common elements, if any. It also sets out the percentages of ownership each unit has in the property and the percentage that each unit contributes to the monthly common expenses, which are usually the same but are not required to be. It specifies the obligations regarding maintenance and repair of the units and common elements by the corporation and the unit owners. The *Declaration* will also include which costs are to be common expenses of the corporation and paid for by the owners' contributions to the monthly common expenses.

The *Description* is a detailed plan of the boundaries, layout and location of the units, common elements and exclusive use common elements in the condominium.

The *By-laws* of the corporation indicate how the corporation will be organized. They deal with matters such as the qualifications of members of the board of directors, the officers of the corporation, the conduct of meetings, the collection of common expenses, occupancy standards, insurance deductibles and other matters as permitted by the *Act*. *By-laws* are made by the board of directors and approved by the unit owners. Effective November 1 2017, the *Act* will define records as Core and Non-Core and will set out the length of time records must be kept, where they must be kept and owners' rights of access to them.

There are also *Rules* of the corporation which regulate the owners' and residents' day-to-day living environment. The board of directors makes the *Rules*. The owners are required to receive notice of the *Rules* and have a right to call a meeting and vote to amend or repeal them.

The initial **Governing Documents** are prepared by the developer. There is neither independent review nor any input from unit owners.

The primary purpose of the condominium corporation is to manage the condominium property. The *Act* provides standards regarding the keeping of records, the rights of owners to access them and the conduct of business generally. The *Act* and the *By-laws* outline

procedures to be followed by the corporation, such as the giving of preliminary notices and notices of meetings, when and where meetings of owners are to be held, the use of proxies, as well as qualifications and disqualifications for board membership, and the election, removal and replacement of directors.

Owners and residents are required to comply with the *Act* and the **Governing Documents** of the condominium corporation. If there is an issue/dispute, the corporation or individual owners may enforce the *Act*, and the **Governing Documents**, either through mediation and/or arbitration, by an application to the courts or an application to the Condominium Authority Tribunal ("CAT"), once it is operational. Starting November 1, 2017 disputes relating to access to records of the corporation will be directed to the CAT for resolution. In the future other disputes, as indicated in the regulations to the *Act*, will be dealt with at the Tribunal. The *Act* also provides the right to apply to a court where an owner or the corporation believes that his/her/its rights have been unfairly affected by the conduct of either the board of directors or other unit owners.

The *Act* and the *By-laws* set out provisions regarding the business of the condominium corporation and outline procedures to be followed by the corporation, when notice is to be given to owners for when different types of meetings are to be held, for the holding and conducting of general and special meetings, the quorum requirements for meetings as well as the election, removal and replacement of directors.

**Are there other types of condominium developments besides the "typical" condominium?**

All condominiums that were created prior to May 5, 2001 and most condominiums built since then are considered "standard" condominium corporations. The *Act* provides for additional types of condominium developments that differ from the standard condominium. The additional types of condominium developments are vacant land, leasehold, common elements and phased condominiums.

**Vacant Land** - allows a developer to register parcels of land as condominium units without the need for buildings. The unit then consists of the land and whatever is built on it; the common elements will usually be the roads, sewers,

water systems and recreational facilities, if any. The developer may set specifications for what can or cannot be built on the units so that there is uniformity in the homes that are constructed. Usually the developer will build the house and the transaction will close upon completion of the house. The unit owner is responsible for all costs relating to the unit including the complete repair and maintenance of the home. The condominium corporation can provide services and carry out maintenance and repair to the unit, if the unit owner fails to do so, and recover its costs against the unit.

**Leasehold Condominium** - is like a traditional condominium except that the condominium is on land that is leased by the developer as opposed to being owned by the developer. The purchaser of the condominium unit therefore buys an interest that is limited as to its duration. The *Act* states that this lease cannot be less than 40 years or more than 99 years, plus rights of renewal. At the end of the lease the condominium building reverts to the property owner/landlord. The common expenses include rent payable to the landlord. Leasehold condominium corporations are most often seen on land that cannot be sold, such as that held by a hospital or other public institution.

**Common Elements Condominium** - is where only the jointly owned property is part of the condominium. The individually owned parcels of land, which are tied to the condominium through an ownership interest in the condominium, are not part of the condominium corporation. They are called parcels of tied land and are commonly referred to as POTL's. This type of project allows property owners to jointly share in the costs of the common property such as roads and recreational areas, with a mechanism for ensuring that contributions to pay for these facilities are made. The surrounding properties, however, are not part of the condominium. Unpaid common expense contributions can be collected by way of a lien against the POTL. The condominium corporation can only provide services and carry out maintenance and repair to the unit if there is a separate contract with the POTL owner. There is however no lien mechanism for recovering these costs against the POTL.

**Phased Condominium** - is where the developer builds a condominium project, for example a group of townhouses or a high-rise building and intends to build more than one phase of the

project. The condominium is registered and ownership of the units is transferred to the individual purchasers. When the second phase of the project is built and registered, it is collapsed into the existing condominium and the first condominium and the second phase become one condominium corporation. However, far more commonly in Ontario, multi-phased projects are registered as separate condominium corporations and they are bound by "reciprocal agreements" for the purpose of accessing, governing and paying for the shared facilities.

### **Who is responsible for what parts of the condominium property?**

All standard condominium projects consist of two parts: the *unit* which is individually owned; and the *common elements* which are shared and jointly owned by all of the unit owners. Some common elements, such as balconies, front and back yards, patios and in older buildings parking spaces and lockers, are designated as exclusive use common elements. Although owned by all the owners, they are attached to one or more units for all time and are for the sole use of the unit or units to which they are linked in the *Declaration*. Exclusive use common elements cannot be bought and sold. The *Declaration* and/or the *Description* of the condominium corporation will describe these in detail.

The contents of *Declarations* can differ. Areas designated as common elements in one condominium corporation might be parts of individual units in another. Most often the unit is defined by its surrounding walls; however, in some cases, normally in townhouse-style properties, the unit may include additional areas such as front and back yards (these are sometimes known as "freehold condominiums"). These distinctions can be important when it comes to the question of who is responsible for the payment for window-washing and landscaping services and/or repairs to the exterior brick or roof.

A typical residential unit in an apartment style condominium project consists of a living room, kitchen, dining room, bedrooms, bathrooms, entranceway hall and closets. Townhouses and detached units might include basements, garages and front or back yards as well. The unit is the property of the owner and the unit owner is

usually responsible for its maintenance and/or repair.

The *common elements* are the parts of the property other than the individual units. These can consist of corridors, lobbies, elevators, and mechanical and electrical systems in apartment style condominium projects as well as recreational facilities, parking areas, the grounds and structural parts of buildings. Their maintenance and repair are normally the responsibility of the corporation, although a *Declaration* may allocate the responsibility differently.

The *exclusive use common elements* may be maintained and/or repaired by either the owner or owners who benefit from their exclusive use or the corporation, depending on what is provided in the *Declaration*. Generally, balconies, parking spaces, storage lockers and lawns in townhouse condominiums are exclusive use common elements; the owners are often responsible for maintaining them but the corporation is responsible for their repair. Since each developer has the right to determine what part of the property will constitute the units and common elements, whether exclusive use or not, every condominium may be slightly different. Since each condominium may have different allocations for who is responsible for maintenance and repair, it is important that you learn what your responsibilities are and make sure you comply with them. Failure to do so can have financial consequences.

### **Is there any warranty on my property?**

The **Ontario New Home Warranty Program Act administered by the Tarion Warranty Corporation** provides protection for condominium buyers of newly constructed residential units. Currently, Tarion does not apply to properties which were converted from another use, renovated or built on existing foundations. The government has announced that this will be changing at some point in the near future.

For those buildings that do have Tarion warranty coverage there are two types of protection.

The first is deposit protection at the time of purchase. The second is warranties on the construction of the units, from the date of occupancy, and the common elements, from the

date of registration. The warranty is limited in scope. To benefit from the warranty the claim must be reported within certain timeframes, usually 1, 2 or 7 years after registration, depending on the type of claim. For further information on what rights you have with the Tarion Warranty Corporation you can contact 1-877-982-7466 or [www.tarion.com](http://www.tarion.com).

### **What are the expenses I have to pay as the owner of a unit?**

This is a question that many buyers do not consider carefully enough before purchasing a condominium. The financial obligations you will have to meet typically include:

- Mortgage payments;
- Property taxes;
- Monthly common expenses, including an amount for the reserve fund;
- Utilities and cable if not included in the common expenses; and
- Depending on how the project is designed, you may also have to pay for a heat pump or HVAC rental.

You are directly responsible for your share of the common operating and reserve fund expenses of the condominium. You and the other owners will have to increase your monthly common expenses to keep up with rising costs. Like everything else in the economy, condominium common expenses will eventually increase.

### **How are the common expenses determined?**

The developer is responsible for allocating the percentage of common expenses payable by each unit. Usually the developer bases the allocation on the size of the unit; the larger the unit, the greater the amount for which it is responsible. However, a developer is not required to use this basis for common expense allocation.

### **What is the Condominium Authority of Ontario (CAO)?**

Effective September 1, 2017 the CAO has been established as an Administrative Authority by the province.



It will be funded by the payment of annual fees collected from the condominium corporations. The purpose of the CAO is to make online information easily accessible to condominium residents, to provide mandatory training for directors and to provide dispute resolution processes.

The CAO also oversees a dispute resolution tribunal. The tribunal will be able to make orders equivalent to court orders on the matters over which it will have jurisdiction, starting with access to records and expanding in the future

All condominium corporations are required to register and file information about the condominium with the CAO and pay the annual assessment. Condominiums will have to file notice of changes of board membership as they occur. Each condominium will pay a fee, calculated on the number of voting units in the corporation, but payable as part of the monthly common expenses. Failure to comply with the obligations regarding the CAO set out in the Act can result in restrictions on access to the CAT and the courts.

### What is a reserve fund?

A reserve fund is a separate trust account which all condominium corporations are required to establish. A portion of the monthly common expenses paid by the owners is transferred to this separate account in the name of the corporation. The reserve fund is the unit owners' savings account for the major repair and replacement costs of the common elements, which occur as a building gets older.

The contributions made are based on a reserve fund study, usually prepared by an engineer, which establishes the amount the board of directors must ensure is contributed. The Act requires that all condominium corporations carry out a reserve fund study and update it every 3 years. If the amount in the reserve fund account is inadequate, the board is required to develop and implement a plan to 'top-it-up'.

A healthy reserve fund is a sign of a financially healthy condominium corporation. The amount in the reserve fund will vary. Where the reserve fund is low, it may be because the corporation has done a lot of work recently and the corporation will be starting to rebuild its fund. If the low figure in the reserve is not the result of

major work having been recently completed, and the amount in the reserve fund does not comply with the engineer's recommendations for funding, then you should do further investigation. The notes to the financial statements, provided to owners at the annual general meeting, will indicate if the corporation is not compliant with the contribution levels set out in the reserve fund study.

### Who manages the property?

Usually, a property management firm, under the direction of the board of directors, runs the day-to-day affairs of a condominium corporation. Some condominium corporations are self-managed. The board is responsible for carrying out the obligations of the corporation as set out in the Act, the **Governing Documents** and any contracts to which the corporation is a party.

While a property management firm under contract to the corporation normally makes the day-to-day management decisions, final authority for policy decisions rests with the board of directors of the corporation.

Directors are elected and can be removed at any time by the owners. Some corporations have By-laws which allow the board members in specific circumstances to remove a director. A director's term is usually 3 years.

If the condominium corporation is unhappy with the agreements entered into by the developer on behalf of the condominium corporation, the *Condominium Act* permits the board of directors and/or the owners to terminate these agreements, with a few exceptions.

Under the *Condominium Management Services Act, 2015*, which will be effective November 1, 2017, property management providers and managers will need to be licensed by the Condominium Management Regulatory Authority of Ontario.

The property manager must abide by a Code of Ethics, take educational courses and, among other obligations, ensure that all money paid by owners towards common expenses is held in separate operating and reserve fund accounts in the name of the condominium corporation.

### **Do I have a say in what happens in the condominium?**

Owners have the right and should participate in the affairs of the condominium corporation.

Decisions made by the board of directors will directly influence the use of common elements and what you can do with your unit. For this reason, you should be well informed about what is happening in your corporation. The condominium corporation provides that some decisions are the sole responsibility of the owner-elected board but others are subject to approval of the unit owners.

The *Act* contains provisions designed to allow unit owners a voice in the running of the corporation.

The *Act* ensures that all the condominium records are available for examination by any purchaser, owner or mortgage lender. Commencing November 1, 2017, the *Act* creates two types of records: core and non-core records and designates the length of time records must be kept. Owners are entitled to access core records quickly for no fee. Non-core records can be accessed by a request for records and for fees established in accordance with the regulations under the *Act*.

### **Who and when should I contact someone at the condominium?**

If you have a problem or a question and you are a resident or an owner of a condominium unit, you should contact management about it. You should first direct your inquiry to the property manager who will respond if it is within his or her authority.

If you want to submit materials to be added to the agenda for a meeting or a requisition to have a meeting called you have to use the forms in the regulations prepared under the *Act*. Each condominium corporation has an official address of service, which is contained in the *Declaration*. If it has been amended, as it often is, the address can be obtained from the management office or it will be contained in the Information Certificate which condominium corporations are required to provide to owners.

Owners and residents should typically address all their requests to property management.

Management will then take those matters, which the board must consider to the next board meeting. Don't expect that you will get an answer to your question immediately. Depending on what the question is you may need to wait until the next board meeting is held and the board members have had an opportunity to review your request.

### **How does condominium living affect me as a home owner?**

Condominium living may be very different from your accustomed style of life. Condominium ownership is unlike either freehold house ownership or renting. The following items point out just some of these differences.

### **Are there restrictions on what I can do with my unit?**

Yes, your ownership is more restricted than other homeowners. The following examples indicate some of these limitations:

- A condominium owner must abide by all the provisions of the *Act* and the **Governing Documents**;
- Some condominiums prohibit all pets, others just pets of a certain size or weight;
- Some condominiums prohibit smoking on the common elements and some prohibit smoking anywhere in the building;
- No owner may damage or neglect his or her unit. To do so depreciates the value of the condominium property as a whole;
- If you or someone for whom you are responsible fails to look after your unit or does something, which results in damage to your unit, other units and/or the common elements, you may be responsible for the costs arising from the damage;
- Most *Declarations* for residential condominiums specify that units can be used only for residential purposes in accordance with the zoning by-law and not for commercial purposes, including AirBnB style rentals; and
- Usually the owner is forbidden from any actions which could threaten the project's insurance coverage (like

having a barbecue on the balcony, for example), making any structural changes to a unit or changes to the common elements without the consent of the condominium's board of directors.

**What if I want to do renovations in my unit? Can I make changes to the Common Elements? Can I fence in my garden, install a satellite dish or install a patio?**

Every condominium has varying restrictions which are set out in the **Governing Documents** regarding what an owner can do with his or her unit. Usually you will be able to decorate the inside of your unit as you wish but you may not do anything that changes the appearance of the building or the exterior. Some condominiums require that the exterior of all window coverings be white or off-white. Some prohibit laying carpet or tiles on balconies.

Usually you cannot remove a wall, change plumbing fixtures, install appliances or replace flooring without the permission of the Board.

Many condominium corporations require that owners, who wish to make more than just cosmetic changes to the interiors of their units, seek permission from the board of directors. If you are buying with a view to renovating the unit, be cautious. You may not be able to do whatever you want. Depending on the renovation the corporation may engage the services of an engineer at your expense. Many corporations require that you sign an In-suite Renovation Agreement so that you are fully responsible to ensure, among other things, that the construction is done properly and within specific hours, etc.

If you want to build a fence, install a satellite dish or a patio or make other changes to the common elements, the *Act requires* that you must have the approval of the board of directors and/or the corporation depending on the change.

You will also have to meet the requirements imposed by the board and sign an Alteration Agreement, which sets out your obligations with respect to the change. This Agreement will make you responsible for the maintenance and repair of the alteration as well as all costs relating thereto including the preparation of the Agreement and the associated legal costs.

**Can I rent my condominium unit? Are there any restrictions on renting?**

Unless restricted from doing so by provisions of the *Declaration* and/or the *Rules* a condominium owner can sell, rent, lease or transfer the title of his or her unit as he or she chooses. Some corporations do not allow owners to sell or rent parking units to persons who do not live in the building. AirBnB is not permitted in most condominium corporations as it contradicts the single family residential zoning. In addition many condominiums have *Rules* prohibiting leasing of units for a term of less than anywhere between 3-12 months, with the intention of eliminating the rental of units for short term hotel style rentals.

An owner who leases his or her unit must deliver to the corporation a summary of the lease or a copy of the lease which includes the name(s) of the tenant(s) and other information.

Many condominiums have owner and tenant information sheets that must be completed by owners and/or tenants before they can move into their units. Many also have elevator reservation agreements.

An owner who rents his/her unit and the tenant are both responsible to the corporation. If an owner whose unit is rented fails to pay his/her common expenses, the tenant can be instructed to pay rent to the corporation. If the tenant does pay the corporation, that amount can be deducted from the rent due to the unit owner and the tenant is not subject to termination of the lease for non-payment of the rent.

The tenant is bound the *Act* and/or the **Governing Documents**, exactly as owners are. If a tenant does not comply with the *Act* and/or *Governing Documents*, the condominium corporation can take action against the owner and/or the tenant.

**Can anyone enter my unit with or without permission?**

The *Act* states that any person authorized by the corporation may enter any unit on reasonable notice at any reasonable time to carry out its duties. In an emergency, immediate entry will be permitted. The corporation may correct any condition which violates the corporation's insurance policy or the **Governing Documents**, whether in the unit or on the common elements. Most condominiums prohibit the installation of

additional locks and are entitled to a key to your unit and will change the locks to the unit, at your expense, if required.

### **Who is responsible for the maintenance and repairs?**

Generally, repairs to common elements are the responsibility of the corporation; repairs to the unit are the owner's responsibility. For example, if the swimming pool in a condominium needs resurfacing, the condominium corporation must take care of this, with the cost paid from the common expenses. If a unit owner is responsible for maintaining and/or repairing the unit and/or a portion of the common elements, then the owner is responsible and if the owner fails to do it, the corporation can do it and recover the cost of the repairs from the unit owner.

Maintenance to parts of the common elements, which are exclusively used by the unit owner – such as a balcony or a patio, may be the responsibility of the individual owner or the corporation, depending on what the *Declaration* provides.

If repairs must be made inside your unit – if, for example, your sink doesn't drain – the responsibility for the repairs is normally yours. For this reason, it is a good idea, in a new project where appliances and fixtures have been provided, to find out about the guarantees and warranties. Are you responsible for parts and labour costs? The builder is not responsible for such costs, nor is the corporation.

### **What is an Information Certificate?**

There are three types of information certificates, in forms set by the government, that boards must distribute to owners at different times – a Periodic Information Certificate, an Information Certificate Update, and a New Owner Information Certificate, . They will include information on the corporation's insurance, the members of the board of directors, compliance with the CAO and other matters similar to items currently included in status certificates. The Periodic Information Certificate must be updated by the board of directors and delivered at least twice a year.

### **Can I stop making monthly payments if I'm not happy with the Board or management?**

No. You are legally bound to pay the monthly common expenses whether or not you are happy with management and/or the board of directors. Common expenses include the cost of insurance, accounting fees, as well as utilities, reserve fund contributions and costs for the physical upkeep of the property.

If you do not make your monthly payments, the corporation can put a lien against your property for the amount owing, together with any interest and legal costs incurred. Your mortgage lender may pay these arrears on your behalf and add the amount to the principal outstanding on the mortgage, but the non-payment of common expenses constitutes default under your mortgage. If neither you nor the mortgage lender pays the arrears, the corporation can collect from tenants, if any, in the unit, seek vacant possession, where necessary and sell your unit to collect the amount owing.

If you are not pleased with how the condominium is run, bring it to the attention of the board of directors or raise your concerns at an annual meeting. If the property manager is not fulfilling the terms of the management agreement, the board can take appropriate action.

### **Do I have to get involved?**

You should get involved. You have made an investment in this condominium. The least you can do is attend general meetings, and vote on the issues. If your corporation uses proxies, whether paper or electronic, you can still cast your vote on the issues on the agenda for the meeting. Remember though, if you or your lawyer have not notified the condominium of your ownership of the unit or you are in arrears of your common expenses for more than 30 days, you are not entitled to either notice of a meeting or to vote at a meeting.

As an owner, you can agree, in a form set by the government, to receive notices electronically and many condominiums are now using electronic voting.

In many ways, a condominium community operates much like a small town. It is essentially the fourth level of government. Just as a town's local residents elect a town council, so

condominium unit owners elect a board of directors to take responsibility for the running of the condominium corporation. The condominium corporation works best when there is active interest by all members.

### **I'd like to be on the Board of Directors. What should I do?**

Let the people in your condominium know that you are interested and the qualifications you have to handle the job. If you are living in a new project, a meeting must be held 42 days after the developer no longer holds majority ownership of the units. A new Board, replacing the developer's Board, will be elected at that time.

The *Act* requires that there be at least 3 directors on the corporation's board. Your corporation's *By-laws* may specify that there are to be more than three directors.

The owners electing the directors do not determine which person will hold which position on the board (i.e. who is president, treasurer etc.); the elected individuals decide who will hold what position.

Directors may be elected for terms of up to 3 years and may run for re-election. Ideally, the first directors elected serve staggered terms and thereafter 3-year terms. That way, there will always be experienced individuals on the Board.

The changes to the *Act*, becoming effective November 1, 2017, will require that a board of directors send a pre-notice to all owners asking persons to indicate if they are interested in becoming board members. If you wish to be a board member, you should check the *By-laws* to see if you meet the qualifications. As of November 1, 2017, as a candidate, you will need to disclose information required by the *Act*. The *By-laws* may also require additional disclosure information and an obligation to deliver it in writing before the notice of meeting is sent to the owners.

### **Can the owners remove a board member?**

To remove a member of the board of directors a requisition for removal, signed by not less than 15% of the owners entitled to vote, must be submitted to the board of directors. Once a valid requisition is received, the board must call and

hold a meeting for that purpose. At that meeting, the members who together own a majority of all the units may remove directors from office by a vote in favour of removal. If removed, the owners will elect other eligible persons to complete the unexpired portion of the removed directors' term. If a vacancy occurs on the board due to a resignation or death, the *Act* allows the board to appoint an eligible individual to fill the vacancy until the next annual meeting.

### **What is a director's role?**

As elected representatives of the owners, the board takes responsibility for managing the condominium property and its business affairs. The *Condominium Act* requires that at least a majority of the directors be present for the board to transact business. Board meetings are generally held on a pre-arranged basis, usually monthly. The *By-laws* of the corporation may allow for meetings to be held electronically.

Every board has certain duties, specified under the *Act*. It must ensure that the corporation registers and maintains its filings with the CAO, along with paying the annual fee/assessment, the corporation's monies are held in trust and properly invested, retain professional services keep and make available for inspection the records required by the *Act*, enter into contracts for property management, service and maintenance, as well as for major repair and replacement. In addition, the board is responsible for enforcing the provisions of the *Act*, and the **Governing Documents**. The *Declaration* and *By-laws* of the corporation elaborate on the duties of the Board. In general, the directors are responsible for the upkeep and maintenance of the project and other business matters, usually by supervising the actions of the property manager.

Directors also have other specific powers as elected representatives of the condominium corporation. They can hire personnel - either individuals or management companies - to maintain the common elements. They can enter into legal contracts and, with the consent of the percentage of unit owners specified in the *Act*, acquire additional property or sell existing property.

Each officer of the board has a specific function:

- the president presides over board meetings and leads the board that is charged with the responsibility for the corporation's affairs;
- the vice-president assists and can substitute in the president's absence;
- the secretary is responsible for the minutes of meetings, giving notices of meetings, keeping the records for the corporation, including the record of owners, mortgage lenders and leases; the treasurer is responsible for expenditures and financial records. Generally, the management company takes care of all day-to-day business affairs of the corporation, reporting to the treasurer by means of financial statements and bank statements; and
- some condominiums have a general manager who serves as liaison between the board and the management company.

Since the treasurer and the board of directors have ultimate responsibility for the business affairs of the corporation, no management company should be given a free hand with expenditures and it should be reporting regularly on all financial matters. The treasurer and/or one other board member should be required to co-sign any cheques made out by the property manager. The treasurer is also responsible for overseeing the corporation's annual audit.

### **What makes a good director?**

Directors, although they usually receive no fee for their work, are expected to take on a great deal of responsibility. Their decisions have far-reaching consequences and they are responsible for large sums of money. Many corporations *By-laws* require that board members agree in writing to abide by a Code of Ethics.

It is helpful if a director possess some expertise in business matters. A working knowledge of the legal intricacies of condominium living would also be a tremendous asset to any director.

To avoid potential personal liability, the *Act* says that directors should seek out and rely on the advice of professionals whose expertise applies to the issues being considered. For example, if the board of directors consults the corporation's

accountant on a financial issue, or lawyer on a legal issue, and makes a decision based on that professional's advice and the decision results in a loss, the board members will be protected from personal liability. If however the board members do not seek the necessary professional advice and make a decision, which results in a loss to the corporation, they may not be protected from personal liability, as they may not have met the standard of care imposed upon them by the *Act*.

Board members should receive advice from several sources before hiring anyone to provide professional services. Boards should not sign a contract prepared by the other party to the agreement without having it reviewed by the appropriate professional. It is wise to seek legal advice on contractual matters since such undertakings can involve large sums of money.

Board members must remember that property managers do not have the engineering, accounting or legal training to qualify them to give engineering, accounting or legal advice.

All board members, elected after November 1, 2017 will have to complete mandatory training. For those board members who want additional training, there are courses available. Contact your corporation's lawyer or the Canadian Condominium Institute for information.

For the protection of the condominium owners who must indemnify the directors for actions they might take (unless such actions are dishonest), the condominium corporation is supposed to carry directors and officers liability insurance.

### **What are the responsibilities of the property manager?**

The property manager is an agent of the corporation and, as the name suggests, takes care of the day-to-day management of the property, under the direction of the Board.

On the authority of the Board, the property manager is responsible for collecting and disbursing common expense money. This money, which must be held in a trust account, is used to maintain and repair the property, pay insurance premiums, etc. Cheques issued by the property management company should be co-signed by at least one director of the corporation.

Ontario has introduced the *Condominium Management Services Act, 2015*. The first part will become effective late in 2017 and will obligate all management companies and managers to be licensed and to take educational courses, comply with standards of conduct and a code of ethics. When the second part becomes effective, management will be subject to discipline procedures. A manager or a management company that is not licensed will find its contract is unenforceable against the corporation.

**When are meetings held and who calls them?  
What kind of notice am I entitled to receive?**

The first, a general meeting of a new condominium corporation, must be called within 3 months after a project is registered. It is usually combined with the Turnover meeting called by the developer once 50% of the ownership of units has been transferred to purchasers. After that, the *Act* requires that annual meetings must be held no more than 6 months after the end of the corporation's fiscal year.

The amendments to the *Act* require that before any meeting of owners is called by the board of directors a preliminary notice of the meeting must be sent to all owners. This notice will be in a form prescribed in the regulations and must be sent 20 days before the notice of meeting is sent to owners. The Preliminary Notice of meeting will have to indicate the purpose of the meeting. If is to elect directors, the Preliminary Notice will call for candidates and the required disclosure information. It will also ask if owners want any materials added to the Notice of Meeting that will be sent later. The board is not required to include these materials unless 15% of the owners have signed the request to include them with the Notice of Meeting.

Annual general meetings are run like the meetings of any other corporation. A chairperson, usually the president or the corporation's solicitor, will preside at the meeting and remarks will be addressed to him or her. The chairperson's permission is required to address the floor. Minutes of the meeting must be kept to record the proceedings, including matters put to a vote. Motions will be presented and seconded; each motion will be discussed and put to a vote.

Owners at meetings will receive reports on the condominium affairs, elect directors to the Board, appoint the auditor and vote on any matters for which notice has been given to the owners and mortgage lenders. Members of the corporation will bring forward issues of general concern for discussion.

Attendance at general meetings normally is restricted by the *By-laws*. Usually only owners, those to whom they have given their proxies, their agents and mortgage lenders and guests of the corporation may attend. Others must have approval of the members, or the chairperson of the meeting, before being allowed to attend.

If owners are unhappy or want to discuss matters with the board of directors they have the right to requisition a meeting. Owners of 15% of the units entitled to vote may sign a requisition asking the board to call a meeting of the corporation. At that meeting, depending on the business set out in the requisition, owners may or may not have the right to vote.

**Who makes up the quorum for a meeting and who is allowed to vote?**

The quorum for an owners' meeting is 25%, of the owners, or higher if a by-law so provides, entitled to receive notice and vote at the meeting who are present in person or by proxy, including electronic proxies. As of November 1, 2017, if the 25% quorum cannot be achieved at two meetings, at the third meeting called the quorum will be reduced to 15% unless the *By-laws* of the corporation provide for a greater quorum. To determine who is eligible to receive notice and vote, the corporation keeps a Record of owners and mortgage lenders. This Record lists the owners' names and addresses. Each owner listed in the Record on the 20<sup>th</sup> day before the meeting is held is served with notice of the meeting, as required by the *Act* at the address shown on the Record and has the right to vote at members' meetings. Owners who are in arrears of common expenses for more than 30 days prior to the meeting and who do not pay the amount owing in full prior to the meeting are not entitled to be counted in the quorum or to vote at the meeting.

It is every owner's responsibility to ensure that his or her name is included in the corporation's Record of Owners and Mortgagees. The *Act* requires that owners deliver information

regarding their ownership to the corporation. Failure to do so will result in the owner not receiving notices of meetings. There is a form that must be completed for this purpose. It is not the corporation's responsibility, unless properly notified to add an owner's name to the Record.

When a mortgage is held on a condominium unit, the person or institution holding the mortgage will probably, by virtue of the mortgage agreement, have the right to exercise the owner's voting right, provided the owner and the corporation are notified of the lender's intention to vote 4 days in advance of a meeting. It is, however, most unusual for a lender to exercise its right to vote.

### **How do you change the condominium documents?**

In theory, members of the condominium corporation have almost unlimited power to change the documents by which they live.

In practice, however, amending these documents is not easy. Changing the *Declaration* or the *By-laws* will take a great deal of perseverance on your part. The *Act* requires either 90% or 80% consent of all the owners of all the units or a court order on limited grounds before a *Declaration* can be amended.

*By-laws* can be made or amended by the board by resolution and confirmed, with or without amendment, by a vote in favour of members who own at least a majority of all the units. Suppose, for example, you want to have a *By-law* setting qualifications for board members beyond what is included in the *Act*. To make this change, you need the support of a majority of all the units, and the board must approve it first. Some *By-laws* can be amended with a majority vote of a quorum but these are on more minor matters.

*Rules* are created or amended by the board of directors and notice of the *Rules* is given to the owners, advising that unless a meeting is requisitioned and the majority of owners vote to defeat the rules they will be effective 30 days after the notice is sent.

### **How is the condominium insured?**

The *Act* specifies that the corporation must insure its obligation to repair the condominium property to its replacement value, subject to a reasonable deductible. The directors must have the condominium assets appraised from time to time to determine that the corporation's insurance needs are being met.

The insurance premiums are part of the common expenses that all owners pay. While the insurance covers the full replacement value of the units and common elements, it does not cover the improvements to a unit or the personal property of the owner, the cost of living out of your unit or if you have a tenant the loss of rental income. It will also not cover a unit owner's responsibility for any insurance deductible.

Your unit owner's insurance should cover the improvements made to your unit (such as wallpaper, upgraded carpets and cabinetry, light fixtures, window coverings, etc.), as well as your personal property, your liability to third parties and any deductible which may be charged back to the unit for damages flowing from your unit and, in some condominiums with the appropriate *By-laws*, where the corporation is not responsible for the loss. It is wise to contact an insurance broker who is either responsible for the corporation's insurance or familiar with it, to make sure you are properly insured and there are no gaps in coverage between your insurance and the corporation's.

You will also want to know if the corporation has established what portions of a unit are considered part of a Standard Unit for insurance purposes. Eventually, condominiums that do not have a standard unit definition will be deemed to have their standard unit set out in the regulations to the *Act*. All condominium corporations registered after May 5, 2001 should have a document stating what forms the standard unit; condominiums registered before that date may have passed a *By-law* to establish the "standard unit" for insurance purposes. As a unit owner you are responsible to insure anything not included in the standard unit. If damage covered by the insurance contract occurs to the condominium property, the insurance company will be contacted in writing by property management or the board. Usually, the board will then take charge of appraisals, the hiring of contractors or whatever else is necessary to effect repairs. Owners are not entitled to deal



directly with the corporation's insurer nor should they repair their units before checking with management to establish if the damage is insured.

**What about additional recreation facilities? Can it change the services I expect to receive?**

Yes, it can. A corporation does have the power to purchase property on behalf of the condominium. It is possible that it could purchase a golf course or even a small farm for members to grow their own produce. Such a purchase, however, would have to be for the use and benefit of the owners, not for investment purposes. It is more usual, however, for a condominium corporation to decide to extend existing facilities on its own property by the addition of further structures – a tennis court or a children's playground, for example.

The corporation also has the right to sell property, and to add, eliminate or vary the services the owners receive.

If the addition, alteration, renovation or change in service is substantial, a vote of 66 $\frac{2}{3}$ % of the owners in favour of it is required. The *Act* defines what is substantial as something, which costs more than 10% of the corporation's annual budget or anything the board decides is substantial. Changes, which are not substantial, can be made without a vote of owners. The board alone can make some changes with no notice to owners; other changes may require that notice be given to the owners who then have a right to requisition a meeting and vote against the change.

**There are many changes coming to the Condominium Act. Are they all going to happen at once?**

There are a lot of changes coming and they will not all become law at the same time. I have included a significant number of the changes that will be effective November 1, 2017 and these are the ones I think you want to know about; not all of them are included.

**To Sum-Up.**

Buying and living in a condominium is more complicated than in a single family home. You must understand what it is you are purchasing and whether the lifestyle will suit you and your family. Now that you have made your decision, and with the benefit of the information in this booklet, I hope you discover that the advantages of condominium living are many and that you find it a rewarding experience!

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