

SHIBLEY RIGHTON LLP
CONDOMINIUM GROUP

We're good at what we do



CONDOMINIUM
OWNERS' AND
RESIDENTS' GUIDE

*By Audrey M. Loeb, LSM, OOnt., B.A., LL.B.,
LL.M., Honorary LL.D., ACCI*

www.shibleyrighton.com



@SRCondoLaw



-i-



**Audrey M. Loeb, LSM, OOnt., B.A., LL.B., LL.M., Honorary LL.D., ACCI
Shibley Righton LLP
700 - 250 University Avenue
Toronto, ON Canada M5H 3E5
Tel: 416.214.5267 Fax: 416.214.5467 Toll Free: 1.800.214.5200
Email: aloeb@shibleyrighton.com**

Audrey Loeb carries on a focused practice in real estate and condominium law, advising with the others in the Real Estate & Condominium Practice Group, developers, buyers, sellers and condominium corporations on issues of corporate governance and operations.

Audrey is AV Rated by Martindale – Hubbell and recognized by both Best Lawyers (Canada) and Lexpert as one of Canada’s leading Real Property Lawyers with a focus on condominiums.

Audrey was awarded The Law Society Medal in 2008, the Order of Ontario in 2019 and an honorary Doctor of Laws in 2022.

She is the author of the leading texts on Condominium Law in Ontario entitled - Condominium: Law and Administration and The Condominium Act: A User’s Manual, published by Thomson Reuters.

She is Professor Emerita of Metropolitan Toronto (formerly Ryerson) University, School of Business Management.

She is a frequent lecturer for the Law Society of Ontario, the Ontario Bar Association and Toronto Real Estate Board. She is a regular columnist in the Toronto Real Estate Board News. She is a frequent guest expert on the CBC and City TV on issues relating to condominium law.

She is a former member of the National Board of Directors of the Canadian Condominium Institute (CCI), the Consumer Advisory Committee of the Board of Directors of the Tarion Home Warranty Program and the Board of Directors of the Real Estate Council of Ontario and has written regular columns for both the Globe and Mail and the Toronto Real Estate News.

Education

London School of Economics and Political Science (LL.M.)
Osgoode Hall Law School, York University (LL.B.)
McGill University (B.A.)

Additional information

Recipient of the Law Society Medal (2008) recognizes outstanding Ontario lawyers whose service reflects the highest ideals of the legal profession. Fewer than 160 lawyers have received The Law Society Medal since it was struck in 1985. Audrey was awarded the medal for her significant contributions to the profession, and to her community as the founder and Chair of the “Weekend to End Breast Cancer” (now the Weekend to End Women’s Cancers) benefiting the Princess Margaret Hospital Foundation.

TABLE OF CONTENTS

	Page
Condominium Ownership: What you need to know.....	1
The Act is divided into parts:.....	1
What are the advantages of living in a condominium?	1
What are the disadvantages?	1
What is a Condominium Corporation?	2
Are there other types of condominium developments besides the "typical" condominium?.....	3
Who is responsible for what parts of the condominium property?	4
Is there any warranty on my property?	4
What are the expenses I will pay as a unit owner?.....	5
How are the common expenses determined?	5
What is the Condominium Authority of Ontario ("CAO")?.....	5
What is a reserve fund?.....	6
Who is responsible for managing the business of the corporation?.....	6
Do I have a say in what happens in the condominium?.....	7
Who and when should I contact someone at the condominium?	7
How does condominium living affect me as a homeowner?	7
Are there restrictions on what I can do in my unit?.....	7
What if I want to renovate my unit? Can I change the Common Elements? Can I fence in my garden, install a satellite dish, or a patio?	8
Can I sell or rent my condominium unit? Are there any restrictions?	8
Can anyone enter my unit with or without permission?	9
Who is responsible for the maintenance and repairs?	9
Can I stop making monthly payments if I am not happy with the Board or management or the corporation does not do what I think should be done?.....	9
Do I have to get involved?.....	10
I'd like to be on the Board of Directors. What should I do?	10
Can board members be removed?.....	11

What is a director's role?	11
What makes a good director?	12
What are the responsibilities of the property manager?	12
Between meetings, does the Board have to keep owners informed?	13
When are meetings held and who calls them? What kind of notice am I entitled to receive?	13
Can the Owners require that the board hold a meeting?	14
Who makes up the quorum for a meeting and who can vote?	14
How do you change the condominium documents?	14
How is the condominium insured?	15
What is a Standard Unit?	15
What about additional recreation facilities? Can the condominium change the services I expect to receive?.....	16
There are changes coming to the Condominium Act.	16
To Sum-Up	16

Condominium Ownership: What you need to know.

When I wrote this booklet the first time in the 1980's, few people knew much about condominium ownership. Today, Ontario has more condominiums than anywhere else in North America, and consumers are more familiar with the condominium lifestyle.

You are now an owner of a condominium unit. This booklet is intended to help you understand what a condominium corporation is, how it functions, what laws and documents will govern your rights and create your obligations as a unit owner and/or resident/tenant.

Let's start with some basics. The term "Condominium" applies to a type of property ownership, not the style of building. 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, (known as freehold condominiums), detached houses, stacked townhouses – any configuration of housing you can imagine. Non-residential condominiums can be industrial, commercial, parking and/or retail. What makes them "Condominiums" is not their physical structure but the way in which owners share the ownership of the common areas of the property, known as the "common elements", while having individual ownership of their "units".

In a condominium, **everything** not designated as a unit is common elements. The common elements include exclusive use common elements, which are permanently designated to a particular unit and solely for the use of that unit, such as patios, balconies and parking and locker spaces in some condominiums. The unit owners share the costs of operating the condominium property through the payment of 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

contains information that applies to both; however, it is focused on the residential unit owner.

The Act is divided into parts:

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

What are the advantages of living in a condominium?

There are advantages to living in a condominium. Some of these are:

- It may be more economical to purchase than comparable non-condominium housing.
- It makes private ownership possible in areas where land values would ordinarily make this too expensive.
- It eliminates the responsibility for some of the problems of upkeep and maintenance often associated with home ownership, since the cost of the maintenance, repair and replacement of the common elements is generally shared by all the unit owners and the responsibility is typically that of the condominium property management.
- It allows ownership in a multi-unit property with owners being responsible for paying their own realty taxes and mortgages; an owner's failure to make these payments will not mean other unit owners have to pay for them.
- It gives the owners a right, to participate in decisions that affect their homes.

What are the disadvantages?

- Owners typically cannot do work on the common element portions of their homes themselves and will need these matters looked after by property management. Work may not be completed in the time you might want.

- Because the condominium will be professionally managed, typically, this adds another layer of costs and sometimes, depending on the type of condominium project in which you live, the costs are higher than they might be if you lived in a non-condominium home.
- Different people have different viewpoints and tastes; Compromises must be made; One size does not fit all.

What is a Condominium Corporation?

A condominium corporation is a method of property ownership. It is not a business corporation. A condominium exists solely to manage the affairs of the condominium corporation, including the maintenance, repair and replacement of the buildings that form the condominium property. How a condominium operates is regulated by the **Act** and the condominium corporation's **Declaration, Description, By-laws, and Rules** (collectively, the "**Governing Documents**").

There are no standardized condominium documents in Ontario and so each developer can, subject to what is set out in the **Act**, choose to include in the **Governing Documents** what it likes. It means that every condominium has different provisions in its **Governing Documents** and it is difficult to make generalized statements so if issues arise in your condominium, a review of the **Governing Documents** will be necessary to make sure you get the right answers to your questions.

The **Declaration** is the equivalent of the constitution of the condominium. It outlines the division of ownership within the condominium by identifying the units, and any exclusive use common elements. Anything that is not a unit is common elements

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. These are usually the same but need not be. The way these percentages are allocated and not mandated by the **Act**. Even though most people assume that the contributions to common expenses are based on the square footage of the units, this is not always the case.

The **Declaration** will limit the uses which can be made of units and/or common elements. It will also allocate the responsibilities of the corporation and the unit owners regarding maintenance, repair and replacement of all or part of the units and common elements. The **Declaration** will also indicate if the condominium shares facilities with one or more other properties and will refer to a Shared Facilities Agreement, which will regulate that relationship. It also lists the common expenses of the corporation that the owners pay through their monthly contributions.

The **Description** is a detailed drawing/plan of the boundaries, layout and location of the units, including both horizontal and vertical boundaries and exclusive use common elements in the condominium. If a patio or parking space, for example, is exclusive use common elements designated to a unit, it will be included in the **Declaration** and shown in the **Description**.

The **By-laws** of the corporation regulate how the condominium corporation is organized. They deal with matters such as the elections of directors and their responsibilities, the calling and holding of meetings of the board and the owners, the qualifications, and disqualifications of members of the board of directors, the officers of the corporation, the collection of common expenses, occupancy standards, insurance deductibles and other matters, as permitted by the **Act**. **By-laws** are passed by the board of directors and approved by the unit owners. Some **By-laws** require the approval of a majority of the units, others only require approval of a majority at a meeting, assuming the meeting has met its quorum requirement.

By-laws will also govern Shared Facilities relationships, the acquisition or rental of equipment benefiting the corporation, the Standard Unit for insurance purposes, the borrowing of money, and other matters, which the developer chooses to regulate by **By-law** or the boards enact over the years.

The **Rules** of the corporation regulate the owners' and residents' day-to-day living environment. **Rules** are passed by the board of directors. The owners receive notice of the **Rules** and if they do not like some or all of the rules, have a right to requisition a meeting at

which they can vote to amend or not approve them. If 15% of the unit owners entitled to sign a requisition do not call for a meeting, in accordance with the **Act** the **Rules** automatically become effective 30 days after notice has been given.

The **Act** is paramount and then the **Governing Documents** have a hierarchy - the **Declaration**, **Bylaws** and **Rules**. A provision in a higher-ranking document will usually override a conflicting provision in a lower ranking document, although it is never quite that simple.

The developer prepares the initial **Governing Documents**. There is neither any independent review of them nor input from unit owners.

The **Act** and the **By-laws** outline procedures the corporation must follow, such as the giving of preliminary notices and notices of meetings, which can be given electronically, if the owner has agreed, the election, removal, and replacement of directors, when and where meetings of owners are to be held, the use of proxies, as well as qualifications and disqualifications for board membership.

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

All condominiums 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 are vacant land, leasehold, common elements, and phased condominiums.

Vacant Land Condominium - allows a developer to register parcels of vacant 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, when

selling vacant land units, the developer will be responsible for building the house, which becomes part of the unit, and the transaction will close upon its completion. The unit owner is responsible for all costs relating to the unit, including its insurance and the maintenance, repair, and replacement of the home. The condominium corporation can provide services and do maintenance and repair to the unit, if the unit owner fails to do so, and it can recover its costs against the unit.

Common Elements Condominium - is where the condominium has no units. The condominium consists solely of the jointly owned property. The individually owned parcels of land, with houses and lots, are "tied" to the common elements condominium because they have a percentage ownership interest in it. The individual lots are not part of the condominium corporation. They are called "parcels of tied land" and are commonly referred to as "POTL's". The POTL's are not part of the condominium. POTL owners jointly share in the costs of the common property such as roads and recreational areas. Because the POTL's are "tied" to a condominium corporation, the **Act** creates a mechanism for ensuring that the costs of running, maintaining, and repairing these facilities are common expenses of the condominium and paid for by the POTL's owners. Unpaid common expense contributions are subject to the right to lien the POTL. The condominium corporation can only provide services and do maintenance and repair to the POTL, if there is a separate contract with the POTL's 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 additional components of the project over an extended period. The first condominium is registered and ownership of the units is transferred to the individual purchasers. When the second phase of the project is complete 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 access, governance and payments for the Shared Facilities.

Leasehold Condominium - is like a traditional condominium except that the condominium is on leased land. 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.

Who is responsible for what parts of the condominium property?

All standard condominium projects consist of two parts: the *units* and the *common elements*. 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. The **Declaration** and/or the **Description** of the condominium corporation will describe these in detail. 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(s) to which they are linked in the **Declaration**. Exclusive use common elements, unlike units, cannot be bought and sold.

The contents of **Declarations** 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 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 and what the owners can or cannot do with their properties.

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 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 landscaped grounds, and structural parts of buildings. Their maintenance and repair are normally the responsibility of the corporation.

The *exclusive use common elements* may be maintained, repaired and/or replaced by either the owner(s) who benefit from their exclusive use or the corporation, depending on what the **Declaration** provides. 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. The developer has the right to determine what part of the property will constitute the units and common elements, whether exclusive use or not, and, as a result, every condominium may be slightly different and have different allocations for who is responsible for maintenance, repair and/or replacement. 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 Plan Act administered by the Tarion Warranty Corporation** provides protection for condominium buyers of newly constructed residential units. Tarion recently extended its warranty to properties converted to a residential use where its previous use was not residential .

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

The first part of the warranty is the deposit and late closing protection at the time of purchase as required

by the *Tarion New Home Warranty Act*. The second part is warranties on the construction of the units, from the date you are required to occupy your unit and ON the common elements, from the date the condominium corporation comes into existence (its date of “registration”, which is the date the **Declaration and Description** are registered).

The owners are responsible for reporting deficiencies in their units and the corporation for reporting deficiencies in the common elements.

It is important to know that the warranties are limited. They do not cover every defect or omission. To benefit from the construction warranty, the claim must be reported to Tarion within certain timeframes, usually 1, 2 or 7 years after occupancy of your unit and/or registration of the corporation. For further information on your warranty rights, you can contact the Tarion Warranty Corporation **1-877-982-7466** or www.tarion.com.



What are the expenses I will pay as a unit owner?

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 allocation to the reserve fund.
- Special assessments, which are common expenses sometimes required for unanticipated costs for which the corporation has not budgeted.

- Utilities and cable, if not included in the common expenses; and,
- A heat pump or HVAC rental may also be an additional expense.

You are responsible for your share of the condominium’s common operating and reserve fund expenses. If you are a purchaser of a unit in a newly constructed building, you may find that your common expenses increase significantly in the second and third years after registration. You will also find that your monthly common expenses will increase to keep up with rising costs. Like everything else in the condominium, common expenses will 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 does not need to do it this way and some do not.

What is the Condominium Authority of Ontario (“CAO”)?

On September 1, 2017, the CAO was established as an Administrative Authority to regulate the condominiums in Ontario.

It is 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 a dispute resolution process.

All condominium corporations must register and file information about the condominium with the CAO, file the required information annually and pay the annual assessment. Condominiums must file notice of changes of board membership as they occur. Each condominium pays a fee, calculated on the number of voting units in the corporation. Failure to comply with the obligations regarding the CAO set out in the **Act** can result in restrictions on access to the

Condominium Authority Tribunal (“**the CAT**”) and the courts.

The CAO also has a dispute resolution tribunal known as the CAT. 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 CAT. The intention is that all disputes arising in the condominium communities will be resolved through online negotiation, mediation and, if those fail, by a decision maker appointed by the CAT. The CAT can make orders equivalent to court orders on the matters over which it has jurisdiction.

Currently disputes relating to access to records of the corporation, parking and pets, and nuisance are matters that proceed through the CAT for resolution. The intention is to expand the CAT jurisdiction. 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.

What is a reserve fund?

A reserve fund is a separate trust account, in the corporation’s name. All condominium corporations must have one. A portion of the monthly common expenses is paid into to this account. 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, typically prepared by an engineer, which establishes the amount the board of directors has an obligation to ensure is contributed. The **Act** requires that all condominium corporations have a reserve fund study conducted and have it updated every 3 years. The study requires a listing of all the major capital components of the property, their expected life span and eventual replacement costs. Based on that information, the engineer will provide the amount of contribution that the condominium is to make annually to its Reserve Fund. 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 may be a sign of a financially healthy condominium corporation but keep reading. The amount in the reserve fund will vary. Where the reserve fund is low, it may be because the corporation has completed major work recently, and monies have been spent. The corporation will now start to rebuild its fund. If the low figure in the reserve is not the result of major work having been completed, and the amount in the reserve fund and/or the contributions being made to it, do not comply with the engineer’s recommendations for funding, then further investigation should be undertaken. The auditor’s report and the notes to the financial statements, provided to owners prior to the annual general meeting, will indicate if the corporation is compliant with the contribution levels set out in the reserve fund study or if reserve fund monies are not being used appropriately. Don’t automatically assume that a large reserve fund balance is an indication of its strength. Failure to do repair work may be the reason.

Who is responsible for managing the business of the corporation?

The **Act** provides that the board of directors of a condominium corporation is responsible to carry out the obligations of the corporation and ensure that owners and residents comply with the **Act** and the **Governing Documents**.

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, but they are the exception. The board is responsible for overseeing that management carries out the corporation’s obligations, including complying with 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.

Ontario introduced the *Condominium Management Services Act, 2015*, requiring property management providers and managers need to be licensed by the

Condominium Management Regulatory Authority of Ontario (“**CMRAO**”).

Property managers 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 informed about what is happening in your corporation. The **Act** provides that some decisions are the sole responsibility of the 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, but most decisions are the responsibility of the board of directors.

The **Act** ensures that all the condominium records are available for examination by any purchaser, owner, or mortgage lender. The **Act** creates two types of records: core and non-core records and sets out the length of time records must be kept. Owners are entitled to access core records quickly and if requested electronically for no fee. Non-core records can be accessed by a request for records in the form set out in the **Act** and fees can be charged for preparing and redacting the requested records, as well as any 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.

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. Do not 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 homeowner?

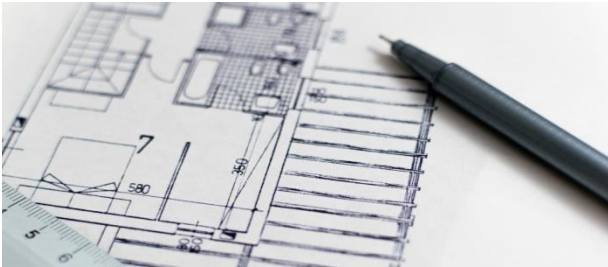
Condominium living may be different from what you are used to. Condominium ownership is unlike either freehold house ownership or renting; it combines elements of both.

Are there restrictions on what I can do in my unit?

Yes, condominium ownership includes restrictions. The following are examples:

- A condominium owner must abide by all the provisions of the **Act** and the **Governing Documents**;
- A resident or visitor cannot behave in a manner that is dangerous or causes a nuisance to others;

- Some condominiums prohibit all pets, others just the number and type of pets and/or pets of a certain size or weight;
- Some condominiums prohibit smoking on the common elements and some prohibit smoking anywhere in the building;
- Owners cannot damage or fail to properly care for their units. To do so depreciates the value of the condominium property as a whole;
- If you or someone for whom you are responsible, a tenant or family member, fails to look after your unit or does something, which results in damage to your unit, other units and/or the common elements, you can be responsible for the costs arising from the damage; and,
- Most **Declarations** for residential condominiums specify that units can only be used only for single-family residential purposes in accordance with the zoning by-law and not for commercial purposes, including Airbnb style rentals.



What if I want to renovate my unit? Can I change the Common Elements? Can I fence in my garden, install a satellite dish, or a patio?

Every condominium has varying restrictions set out in the **Governing Documents** regarding what owners can do with their units. Usually, you will be able to decorate the inside of your unit as you wish, but anything beyond decorating requires the written approval of the board.

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

You cannot do anything that changes the appearance of the building. Many condominiums require that all exterior window coverings be white or off-white and

many prohibit laying carpet or tiles on balconies. 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 have the written approval of the board of directors.

You will also have to meet the requirements imposed by the board and sign a Section 98 Alteration Agreement, which sets out your obligations with respect to the change. This Agreement will make you responsible for insuring, maintaining and repairing the alteration, as well as all costs relating thereto, including the preparation of the Agreement and the associated legal costs. This Agreement will have to be registered on title to the unit and will be binding on any future owner of the unit.

Can I sell or rent my condominium unit? Are there any restrictions?

In most condominiums, owners can sell, rent, lease, or transfer the title of their units as they choose. Many corporations do not allow owners to sell or rent parking or locker units to persons who do not live in the building nor can they retain ownership of them if they sell their residential units.

Typically, condominium owners have the right to rent their units. There may be restrictions in the **Governing Documents** prohibiting the leasing of units for a term of less than anywhere between 3-12 months, with the intention of eliminating rentals for short term hotel style rentals stays.

Short term rentals are prohibited in many condominium corporations, as it contradicts the single-family residential zoning by-laws of the municipalities. Some municipalities have enacted new by-laws that

only allow a unit to be used for short term rentals if the owner lives in the unit being rented.

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 require that people moving into the condominium complete an elevator reservation agreement. If not completed, the elevator will not be available for the move.

Owners who rent their units and their tenants are both responsible to the corporation. If an owner whose unit is rented fails to pay the common expenses, the tenant can be instructed to pay the 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 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 proceedings against the owner and/or the tenant. The costs of these proceedings are typically the responsibility of the unit owner, as the owner is the landlord of the unit and responsible to the corporation for the conduct of the tenant.

Can anyone enter my unit with or without permission?

The **Act** states that any person authorized by the corporation may enter an owner's unit on reasonable notice at any reasonable time to carry out its duties. In an emergency, immediate entry is permitted. The corporation may correct any condition that violates the corporation's insurance policy, the **Act** or the **Governing Documents**, whether in the unit or on the common elements. Most condominiums prohibit the installation of additional locks and, if permitted, are entitled to the extra key to the unit. If entry is needed

and no key is in the possession of the corporation, the locks will be changed at the owner's expense.

Who is responsible for the maintenance and repairs?

Generally, maintenance and repairs to the common elements are the responsibility of the corporation; maintenance and repairs to the units are the owners' responsibility.

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 to complete the repair and pay for it. If the owner fails to do it, the corporation can do it and recover the cost of the repairs from the unit owner.

If repairs must be made inside your unit – if, for example, your sink does not drain – the responsibility for the repairs is yours. For this reason, it is a good idea when buying into 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 these costs, nor is the corporation.

Can I stop making monthly payments if I am not happy with the Board or management or the corporation does not do what I think should be done?

All owners are legally bound to pay the monthly common expenses. There are no grounds on which an owner can refuse to pay. Common expenses are what pay the monthly bills for the corporation. They include employee salaries and benefits, the management fee, the cost of insurance, accounting, engineering, and legal 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 will register a lien against your property for the amount owing, together with any interest and legal costs incurred. If you have a mortgage, the 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 and the lender may choose not to pay. If there are tenants in the unit and neither you nor the mortgage lender pays the arrears, the corporation can collect from tenants. If the monies owing remain unpaid, the corporation will issue a Notice of Sale. This allows the corporation to get a court order for vacant possession of the unit and then sell the unit to collect the amount owing.

Do I have to get involved?

No one needs to get involved but this is your biggest investment and you should. You are part of a community. You should attend general meetings and vote on the issues. Now that meetings can be done electronically, it is so much easier to participate. If your corporation uses proxies, whether paper or electronic, you can choose someone to give your proxy to and indicate how you want that person to vote or cast your vote on the issues on the agenda for the meeting right in the proxy.

If you and/or the lawyer, who acted on your purchase transaction, have not notified the condominium in writing that you are now the owner of the unit with your address, if you do not live in the condominium, or you are in arrears of your common expenses for more than 30 days, you will neither receive a notice of or be allowed to vote at a meeting.

As an owner, you may be asked to agree in writing to receive notices from the corporation electronically. This allows the condominium to reduce its meeting costs by providing notice to owners without the need to print and mail notice.

In many ways, a condominium community operates much like a small town. It is the fourth level of government. Just as a town's residents elect a town council, so condominium unit owners elect a volunteer board of directors, whose job is to oversee 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 your qualifications to handle the job. If you are living in a newly registered 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. You will receive notice of that meeting, sent by the management company under the direction of the developer. Make sure the condominium has the address at which you wish to receive notice from the corporation.

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

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 the officers will be.

Directors are typically elected for terms of up to 3 years and may run for re-election. Ideally, the first directors elected serve staggered terms of 1, 2 and 3 years and thereafter 3-year terms. That way, there will always be experienced individuals on the Board.

Before a meeting to elect directors is called, the **Act** requires that the condominium 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 **Act** and the **By-laws** to see if you meet the qualifications for board

membership. A candidate is required to disclose information required by the **Act** and/or additional disclosure requirements included in the **By-laws** if they impose before the Notice of Meeting is sent to the owners. A candidate's written disclosure must be delivered to the corporation.

Can board members be removed?

To remove a member of the board of directors, a requisition in writing for removal, signed by not less than 15% of the owners entitled to vote, must be submitted to the board of directors. It must indicate which board members are subject to removal and why. Once a valid requisition is received by the board, it 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 volunteer representatives of the owners, the board is responsible for managing the condominium property and its business affairs. The **Act** requires that a majority of directors be present for the board to transact business. Board meetings are generally held on a pre-arranged basis, usually on a fixed day and time each month. The **By-laws** of the corporation may allow for board meetings to be held virtually.

Every board has duties as specified under the **Act**. The board 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**, review existing contracts, 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 **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 condominium 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**, pass **By-laws**, make changes to the common elements, amend the **Declaration**, acquire additional property or sell existing property.

Each officer of the board has a specific function:

- the president presides at board meetings and leads the board in ensuring that it meets its 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;
- the functions of the secretary and treasurer are usually done by the management company. Management 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 have a free hand with expenditures and should report monthly

on all financial matters. The treasurer and/or one other board member should 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 are almost always volunteers and receive no fee for their work; they are, however, 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 and Conduct as a qualification for board membership.

It is helpful if a director possesses some expertise in business matters, can read financial statements and understands the basic elements of corporate governance. A working knowledge of the legal framework 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 its 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, that results in a loss to the corporation, they may not avoid 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. The corporation's legal counsel should review the specifications for large reserve fund projects, prepared

by the corporation's engineers, before they are sent for bids to ensure that the corporation is protected from cost overruns and unauthorized work. The contract for the work to be done is formed based on the tender package, so it is important for it to be reviewed and amended, as necessary, before it goes out to tender. Changes cannot be made to it once the bids have been received. 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.

The **Act** requires that board members complete mandatory training from the CAO within 6 months after being elected or appointed to the board. Failure to meet this requirement results in automatic removal as a board member. 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. This insurance will protect board members from financial liability provided they have met the standard of care and acted honestly and in good faith when carrying out their duties.

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 in the name of the condominium corporation, is used to maintain, repair and replace the property, pay salaries, contractual obligations, utilities, insurance premiums, etc. Condominium management companies must be licensed in Ontario. Under the *Condominium Management Services Act*, this **Act**

obligates all management companies and managers to be licensed and to take educational courses, comply with standards of conduct and a code of ethics. Before signing a management contract, the board should have it reviewed by its legal counsel and check with the CMRAO that the management provider and the manager are licensed. A manager or a management company that is not licensed will find its contract with a condominium corporation is not enforceable and monies owing to management will not be collectable by the management company. The *Condominium Management Services Act* also provides that managers will be subject to discipline procedures and ultimately the revocation of a license.

Between meetings, does the Board have to keep owners informed?

Boards must issue information certificates, which are intended to ensure that the owners are informed of what is happening in the condominium. They must be delivered to owners at certain times and upon the happening of certain events.

There are three types of information certificates the **Act** requires the board send to owners in forms set by the government, at different times:

1. a Periodic Information Certificate, which must be updated by the board of directors and delivered at least twice a year;
2. an Information Certificate Update, which must be delivered when certain events occur; and,
3. a New Owner Information Certificate.

They include information on the corporation's insurance (including the amount of the deductibles), the membership of the board of directors, the corporation's compliance with the CAO requirements, as well as other matters similar to items currently included in a status certificate.

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

The first general meeting of a new condominium corporation must be called and held within 3 months after a project is registered. This meeting 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 be held no more than 6 months after the end of the corporation's fiscal year.

The **Act** requires that before any meeting of owners is held by the board of directors, a Preliminary Notice of Meeting must be sent to all owners. This notice is in a form included in the regulations and must be sent 20 days before the Notice of Meeting is sent.

The Preliminary Notice of Meeting includes the planned date for the meeting and the purpose of the meeting. If it is to elect directors, the Preliminary Notice will call for candidates and certain disclosure information about each candidate. 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 any materials submitted by owners in the Notice of Meeting unless 15% of the owners have signed the request to include it with the Notice of Meeting.

Meetings are run like the meetings of business corporations. These meetings can be held virtually or in person or a combination of both. A chairperson, usually the president or the corporation's solicitor, will preside at the meeting and remarks are addressed to the chairperson. The chairperson's permission is required to address the meeting. Minutes of the meeting must be kept as a record of the proceedings. Motions will be presented and seconded; each motion will be discussed and put to a vote. There are various means to vote at meetings of owners, including voting in person, by proxy or electronically. The board has a duty to conduct owners' meetings fairly and allow for discussion and questions from the owners.

At the meetings, owners will receive reports on the condominium's affairs, elect directors to the board, appoint the auditor and vote only on matters included in the Notice of Meeting. Members of the corporation can bring forward issues of general concern for discussion. It is important to know that not all matters require the approval of owners, and no vote is binding on the board of directors if notice of the matter was not given to the owners in the Notice of Meeting.

Who can attend a general meeting is normally restricted by the **By-laws**. Usually only owners, those to whom they have given their proxies, their agents, 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.

Can the Owners require that the board hold a meeting?

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, who are entitled to vote, may sign a requisition asking the board to call a meeting of the corporation. Signatures of owners who are in arrears of common expense payments, residents who do not have an ownership interest in the unit, and tenants are not valid. If the meeting is held in response to a requisition received from owners, the requisition must be included in the Notice of Meeting. Since some matters do not require the approval of owners, the business set out in the requisition may not be subject to a vote of owners and the meeting will be for discussion purposes only.

Who makes up the quorum for a meeting and who can vote?

The quorum for an owners' meeting is 25% of the owners of units, 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. If the 25% quorum cannot be met at two meetings, at the third meeting called, the quorum is 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, who have notified the corporation of their interest in the property and a list of units that are in arrears of common expense payments.

This Record lists the owners' names and addresses of service if they do not live in the unit. Each owner whose name is on the Record on the 20th day before the meeting is to be held is served with a Notice of Meeting, as required by the **Act** at the address shown

on the Record. 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 counted in the quorum and cannot vote at the meeting.

Owners are responsible to ensure that their names are 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 or having the right to vote. 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 **Governing Documents**. In practice, however, amending these documents is not easy.

The **Act** requires the written consent of either 90% or 80% of all the owners of all the units or a court order to amend a **Declaration** depending on which provisions are being changed.

By-laws are made or amended by the board and confirmed, usually, 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. 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** dealing with minor

procedural matters, can be amended with a majority vote of a quorum at a meeting.

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 a majority of owners vote to defeat the proposed **Rules**, they will be effective 30 days after the notice is sent.

How is the condominium insured?

Condominium insurance is a complex issue and a very important one for the corporation and the owners.

The **Condominium Act** requires the corporation to 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 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 the unit is rented, the loss of rental income. It will also not cover a unit owner's responsibility for any insurance deductible.

Do I need to have insurance?

When you occupy and/ or become the owner of a condominium unit you need to have insurance on your unit.

If your condominium has either a Standard Unit definition or By-law it will include all the items in your unit covered by the corporation's insurance policy. Some condominiums have a detailed list of inclusions and some include only the drywall and the electrical and plumbing services. You will get the Standard Unit information with the final closing documents in a new purchase and the Status Certificate in a resale purchase.

You should also have coverage for:

1. All your personal belongings.
2. All improvements to the unit being those items not listed as part of the Standard Unit (such as wallpaper, window coverings, floor coverings, upgraded carpets and cabinetry, light fixtures, etc.).
3. Any insurance deductible for which you may be responsible as provided for in the condominium bylaws or declaration.
4. The cost of living somewhere else if you need to move out of your unit because the unit is uninhabitable due to an insured risk or to house your tenants if they cannot live in the unit.
5. Liability for injury to anyone hurt in your unit.
6. Any special assessment levied by the corporation because there are not enough insurance proceeds to cover the insured loss.

If your condominium does not have a standard unit definition or bylaw, in addition to the above, you will need to insure everything in the unit that was not there when the condominium was built.

As stated above, your unit owner's insurance should cover the improvements made in or to your unit as well as your personal property, your liability to third parties and any deductible that may be charged back to the unit for damages flowing from your unit, whether you are at fault or not. In some condominiums the **By-laws** provide that in all circumstances, other than where the corporation's negligence caused the loss, the unit owner is responsible for the deductible.

We recommend that you contact the insurance broker responsible for the corporation's insurance or one who is familiar with condominium insurance to make sure you are properly insured and there are no gaps in coverage between your insurance and the corporation's.

What is a Standard Unit?

The Standard Unit definition sets out what components of your unit are covered by the corporation's insurance. In many condominiums, which came into

existence prior to May 2001, there is no Standard Unit. It is the government's intention to eventually establish a Standard Unit definition that will apply to all condominiums that do not have one. All condominium corporations registered after May 5, 2001, should have a document stating what forms the standard unit; many condominiums may have passed **By-laws** to establish the "standard unit" for insurance purposes. As a unit owner, you are responsible to insure all items not included in the standard unit. If damage occurs in your unit and it is covered by the corporation's insurance or the damage is to the condominium property, the insurance company will be contacted by property management or the board. The corporation will take charge of appraisals, the hiring of contractors or whatever else is necessary to effect repairs. Owners should not be dealing directly with the corporation's insurer nor should they repair their units before checking with management to establish if the damage is insured. If you do repairs to your unit before determining who is responsible, you will not be able to recover your costs from the corporation.

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

A corporation can change services by increasing or decreasing them. Depending on what change the board wants to make, it must comply with the provisions of the **Act**.

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 that costs more than 10% of the corporation's annual budget or anything the board decides is substantial. Changes, which are not substantial, do not require a vote of owners. The board has the right to 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 changes coming to the Condominium Act.

There are numerous changes in the **Act**, which was passed in 2015, that will become law over an extended period. The condominium world is evolving and growing. There are changes in the **Act**, which the government has not addressed at all and those of us in the industry do not know when they will happen. As they happen, I will update this booklet to keep readers current.

To Sum-Up.

Living in a condominium is more complicated than 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!

Prepared by:

**Audrey M Loeb LSM. OOnt. B.A. LL.B. LL.M.
Honorary LL.D. ACCI
Shibley Righton LLP
Barristers & Solicitors
700 - 250 University Avenue
Toronto, ON M5H 3E5
Tel: 416.214.5267
Fax: 416.214.5467
E-mail: aloeb@shibleyrighton.com**



SHIBLEY RIGHTON LLP
Barristers and Solicitors