

How the Changes in Legislation Affects You (an Owner) Directly

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The Act and Regulations

- Condominium Property Act, RSA 2000 c. C-22 (the “Act”), amended 2014, is being partially proclaimed in 4 parts
- Condominium Property Regulation, 168/2000 (the “Regulations”) (being proclaimed at different times) – with more regulation to come
- The Act and Regulations supersede bylaws if they are in conflict
- Changes to Act result of years of work, passed by former PC government prior to election. Regulations result of years of consultation and listening by the government

S.67 – Improper Conduct Broadened

- Effective January 1, 2018 an owner can be guilty of improper conduct if their conduct is oppressive or unfairly prejudicial to the corporation, a member of the Board or another owner (s.67(1)(a)(iii.1) of the Act).
- Previously an Owner guilty of improper conduct if in breach of bylaws.
- Provides new mechanism for corporations and other owners to deal with “problem” owners.

Post Development: First AGM and Budget

- Developer must call meeting of Owners within 90 days from the sale of 50% of the Units
- If delayed any Owner may convene the meeting
- Elected Board takes over from the Developer’s Interim Board
- Elected Board calls the first AGM
- Must be within 1 year from registration of the Plan
- Must comply with all requirements for an AGM
- Actual expenses > budget = Developer pays (exceptions)

Developer’s Agreements

- The Corporation can terminate most contracts & agreements entered into by the Developer on 60 days written notice.
- Certain agreements (easements, restrictive covenants, exclusive possession agreements, utility contracts, and other agreements (as per Regulations)) cannot be terminated.

Bylaws

- Condominiums have until July 1, 2020 to amend their Bylaws BY ORDINARY RESOLUTION to bring them into compliance with new provisions of Act/Regulations.
- CANNOT use to amend a bylaw not in conflict or to simply add new bylaws.
- Effective July 1, 2019, New Statutory Bylaws: (Appendix 1 and 2 in Act replaced by Schedule 4 in Regulations).

Rules (32.1(4) of Act and 31.25, 73.54(6) of Regulations)

The Board, may, by Resolution, make Rules regarding:

- procedures used in the administration of the Corporation,
- the property of the Corporation,
- the Common Property, and
- the Managed Property.
- The Rules must not restrict the uses of units.
- Owners can change or rescind Rules by Ordinary Resolution.
- No monetary sanctions (fines) for violation of Rules
- Written Notice of Rules must be provided to Owners and Tenants (Tip: have to prove notice in order to enforce)
- Previous Rules cease to be effective unless Notice is provided by September 1, 2019
- New Rules don't come into effect until 30 days after Notice

Service of Documents

- Personal Service – “hand to hand” – Served on the date given
- Recorded Mail – Served on the date accepted.
- If in Bylaws – Ordinary Mail – Served 7 days (or 14 days if outside Alberta) after mailing.
- Effective January 1, 2020: Electronic Service or email (13+ Units). Owners must Request & consent to electronic service and provide an electronic address for service. Service is effected 24 hours after document is sent.
- Can be used for notice of meetings and minutes.

Right to Additional Documents (s.20.57 of Regulations (July 1, 2019))

- Now Section 43.2 of the Act for Estoppel Certificate: Must certify amount of Contributions payable by the Owner, frequency of Contributions, amount of Contributions in arrears and amount of interest in arrears.
- Increased right of access to documents (s.20.57 of Regulations) changes include:
 - Loan disclosure statements (starting balance, current balance, interest rate, monthly payment, purpose of loan, amortization period, and default information).
 - In respect of a particular fiscal year, a copy of all approved minutes (of proceedings) of all general meetings of the corporation, or if not available, draft minutes, and approved minutes of board meetings
 - Copy of consolidation of rules (s.32.1 of Act)
 - List of names and addresses for service of Board members
 - Text of ordinary and special resolutions voted on by Corporation and results of voting (unless show of hands)
 - Copies of reserve fund plans, reports, and annual reports
 - Text of ordinary and special resolutions voted on by Corporation and results of voting (unless show of hands)
 - Copies of reports by professionals, including engineers, excluding reports requested by legal counsel for actual or contemplated litigation
 - Copies of insurance certificates and policies (previously s.48 of Act)

NOTE: Right to documents previously listed in s.44 continues after July 1, 2019, therefore see s.20.57 of Regulations for complete list

Fees for Documents & Document Retention

- Estoppel Certificate (s. 43.2 of the Act) \$100 (maximum)
- A document other than an Estoppel Certificate - \$10
- Some documents can be obtained within 3 days for \$30
- Where a bylaw, Act or this Regulation requires free provision of a document, cannot charge a fee when document provided in response to that requirement
- Document retention – Schedule 3 of Regulations

Monetary and Non-Monetary Sanctions (July 1, 2019)

Monetary Sanction only for breach of bylaws

- S.35(1) of Act: A corporation may by bylaw establish monetary or other sanctions that may be imposed on owners, tenants and occupants who fail to comply with the bylaws.
- 73.53(1) A corporation may serve a notice of proposed sanction on a person who fails to comply with a bylaw or rule established under a bylaw.
- 73.54(6) For greater certainty, despite any bylaws to the contrary, no monetary sanction may be levied for a contravention of a rule.

Non-Monetary Sanction possible for breach of Rule established by bylaws

- Owners, tenants and occupants may be issued monetary sanctions (fines) or non-monetary sanctions for breach of bylaws
- New process for issuance of fines and sanctions
- Establishes possible use of “Proposed Sanction” mechanism by Board
- Board cannot delegate responsibility to impose sanction
- Continued obligation for Sanction to be “reasonable”
- New limits - Residential: \$200 (or lower if in bylaws) for first instance and \$500 for subsequent (IF Continuing - \$200 first week and \$500 subsequent weeks)
- New Limit - Commercial: \$1000 (or lower if in bylaws) for first instance and \$2500 for subsequent (IF Continuing \$1000 first week \$500 subsequent weeks)
- Maximum \$2700 residential units, parking spaces and storage units; \$13,500 non-residential
- Corporation must serve notice of issued sanction, including:
 - Amount of monetary sanction, instructions and deadline for payment (or particulars if non-monetary sanction)
 - Reasons for sanction and date Board approved sanction
 - If non-owner, notice of proposed sanction served personally, mailed, left with person 18 years or older at unit, or by email if such has been provided. (if sanctioning a tenant, owner must be provided with copy)

Reserve Funds (July 1, 2019)

- Reserve fund, reasonably sufficient for repair and replacement of real, personal, common and managed property.
- Small corporations (12 units or less) may do own study.

- New standards for provider (inspect, interview no conflicts)
- Repairs must not be the type that occurs annually
- Special Resolution required for capital improvements unless required health, building, occupancy standards. (Contemporary equivalent of obsolete property or lower cost equivalent of existing property not a capital improvement).

Borrowing (July 1, 2019)

- Borrowing now expressly provided for in Act and Regulations
- If greater than 15% of revenues or prior maximum approved amount, then must be approved by Ordinary Resolution (or Special Resolution if Bylaws require)
- Resolution must specify a maximum amount
- NOTE: Loan disclosure requirements for owners, purchasers, mortgagees and their solicitors (s.20.57 of Regulations)

Contributions (condo fees) July 1, 2019

- Contributions are set through s. 39 of the Act
- Board may "by resolution" determine the amounts necessary for the administration of the Corporation
- Sanctions are not to be considered a contribution
- Special Assessment now a "special levy"

Rental Deposits (July 1, 2019)

- Amount of deposit to be paid by the Owner - no longer maximum of one month's rent
- Regulations stipulate the maximum amounts - \$250 maximum where the term of lease is 6 months or more or \$1,000 maximum where the term is less than 6 months
- Any prior collected rental deposit may be retained in full
- A rental deposit can be collected like an unpaid contribution

Insurance

- A Corporation required to provide Owner written notice of any change and a copy of the insurance certificate within 30 days from date Corporation receives the insurance certificate
- Specifically, notify of any change in amount of deductible, replacement value of the coverage, addition to permitted exclusions (and otherwise as per Regulations)
- Corporations required to carry a fidelity bond for malfeasance by board or manager (July 1, 2020)
- Substantial changes:
 - For residential condominium units the Corporation will now be required to create a Standard Insurable Unit Description (or multiple Standard Insurable Unit Descriptions for different classes of units).
 - Corporation is responsible to repair what they are responsible to insure.
 - Corporation is not responsible to repair portions that they are not responsible to insure.
 - Corporation to rebuild on the basis of the standard insurable unit description unless the Owner has insured improvements or will pay to vary the standard of the rebuild.
 - Bylaws may require Owners to have deductible coverage

- **HOWEVER REGULATION 62.4 STATES THAT AN OWNER IS "ABSOLUTELY LIABLE" IF THE DAMAGE ORIGINATES IN OR FROM THE OWNER'S UNIT OR EXCLUSIVE POSSESSION AREA (AKA. EXCLUSIVE USE AREA).**
- Absolute Liability means that the Unit Owner will be responsible to reimburse the Corporation for the Insurance Deductible, even if there was no fault on the part of the Occupant or Owner.
- Limited exceptions such as a construction defect or an act or omission attributable to the Corporation, Board, employee, or agent.

unit owner insurance have deductible coverage

INSURANCE – VERY IMPORTANT

- EACH OWNER SHOULD OBTAIN SEPARATE UNIT OWNER INSURANCE POLICY AND ENSURE THAT THEIR DEDUCTIBLE COVERAGE SUFFICIENT FOR CORPORATION'S DEDUCTIBLE
- EACH OWNER MUST PAY ATTENTION TO CHANGES IN INSURANCE POLICY (as notified by Corp.)

General Meetings

- Now two types of "General Meetings" - Special or Annual.
- New AGM Notice requirements:
 - Preliminary Notice – 60 days before AGM
 - Must state date of AGM > Must Call for Owner's Agenda Items
 - Notice of meeting – 14 days before AGM

Annual General Meeting (July 1, 2019 or later)

- Owner's agenda item:
 - provided by Owner no less than 30 day prior to meeting
 - clear description of the proposed agenda item with enough detail for the Owners to vote on whether it should be included on the Agenda
- At beginning of AGM Owners will vote on whether proposed items will be included on the Agenda
- Notice of AGM to include
 - Proposed Agenda (including summary of Owner's Agenda Items),
 - Minutes of all Board meetings since last AGM,
 - Draft Minutes of last AGM,
 - Annual Reserve Fund Report
 - Financial Statements for preceding fiscal year
 - Current Budget

Post-Annual General Meeting

Within 30 days of AGM Corporation to provide copy of draft AGM Minutes which must include:

- Number of Units and Unit Factors in attendance
- Outcome of each vote: (result of show of hands vote and number of votes for and against for Unit Factor vote)
- Number of votes cast in favour of each candidate for the Board

- A copy of the filed Notice of Change of Directors

Special General Meeting

- Board may convene a Special General Meeting anytime
- Board must convene a Special General Meeting within 30 days after receiving a request in writing from persons entitled to vote representing 1,500 Unit Factors (s.30.1 of Act)
- Request from Owners must specify nature of business
- A meeting may be called for the purpose of replacing the Board before the expiry of their term
 - Must be done by resolution (specify the Board members to be replaced and how to be replaced by)

Voting (July 1, 2019)

- One vote per Unit regardless of type or style of Unit
 - Residential Units
 - Commercial Units Parking Units
 - Storage Units
 - Bare Land Units
- Right to vote suspended if more than 60 days in arrears in payment of any contribution or judgment owed to Corporation

Voting (July 1, 2019)

- All votes are to be conducted by a show of hands vote unless someone demands a Unit Factor Vote (Poll Vote)
 - Ordinary Resolution – majority of votes cast
 - Special Resolution – 75% of all eligible Units and 75% of the total eligible Unit Factors (7,500 UF less UF owned or controlled by the Corporation) – Tally must be recorded in the Minutes

Voting

- Show of Hands Votes by Co-Owners at Meetings
 - Joint Tenants: If only 1 Owner attends, that Owner votes for the Unit. If more than 1 attend, 1 Owner votes for the Unit and if the Owners don't agree, the Unit vote is not counted
 - Tenants in Common: If only 1 Owner attends, that Owner votes for the Unit. If more than 1 attend, split the vote amongst the Owners in proportion to their ownership interests
- Unit Factor (Poll) Votes by Co-Owners at Meetings
 - Joint Tenants: If only 1 Owner attends, that Owner votes for the Unit. If more than 1 attend, split the vote equally amongst the Owners
 - Tenants in Common: If only 1 Owner attends, that Owner votes for the Unit. If more than 1 attend, split amongst the Owners in proportion to their ownership interests
- Written Votes
 - Ordinary Resolution: 50% of all Units and 50% of the total eligible Unit Factors (not Units owned by the Corporation)

- Special Resolution: 75% of all Units and 75% of the total eligible Unit Factors (not units owned by the Corporation)
- 1 year to obtain vote
- Results must be provided to Owners & Mortgagees within 30 days
- Written Votes by Co-Owners
 - Joint Tenants: If only 1 Owner votes, that Owner votes for the Unit. If more than 1 Owner votes, the vote is split equally amongst the Owners. Extra Unit factors go to the first person shown on title (has to state "joint tenant" on title).
 - Tenants in Common: If only 1 Owner votes, that Owner votes for the Unit. If more than 1 Owner votes, the vote is split amongst the Owners in proportion to their ownership interests (if silent as to nature of interest, then Tenants in Common")

Proxies (July 1, 2019)

- Must be in writing, dated and signed by the Owner
- Vote cannot be given to the Manager, except for quorum
- Owner can state restrictions or instructions on Proxy
- Proxy expires 6 months after it is given
- The Bylaws and Rules can set out requirements respecting the use, verification and registration of Proxies

Electronic Voting (July 1, 2019)

A Corporation may use electronic voting if the Bylaws provide specific directions regarding:

- the acceptable means of electronic voting
- the types of votes that may be conducted electronically
- the security requirements for electronic voting, including any encryption and authentication requirements

Condominium Tribunal

Still to Come