



Condominium Property Act Regulations – Proposed Amendments

Overview

AREA wants to ensure governments have the information and facts they need to develop and implement responsible condominium regulations that protect consumers and remove barriers to condominium ownership.

It is safe to say that there is universal alignment on the fact that condominium ownership is a complex transaction that involves more due diligence than single family ownership.

Bill 9, the *Condominium Property Amendment Act*, which passed in December 2014 (awaiting proclamation) provides a strong framework to resolve many issues. Others can be resolved through the *Act's* supporting regulations. The Alberta Real Estate Association (AREA) is pleased to see the Phase 1 changes to the Regulations published on Service Alberta's website October 15 offer greater consumer protection in relation to items like occupancy dates, material changes and budget requirements.

AREA is proud of the engagement and impact our involvement has had on the outcomes as published by Service Alberta. AREA's advocacy efforts are a core member service in which continued proactive due diligence and engagement strategies on prioritized real estate industry topics is paramount. AREA continues to work hard to maintain the earned position at the table to consult with Service Alberta on these Regulations and is immersed in working proactively and cooperatively with the provincial government and other stakeholders to address this issue in a manner that protects the public's interests. (A separate Submission Paper has been produced that includes the necessary details required to aid in Service Alberta's review work).

Alberta REALTOR® Position

AREA urges elected officials to promote changes to Alberta's Condominium Property Act Regulations that will enhance consumer protection via the following recommendations:

1. Establish and mandate the use of a central repository to improve the timeliness, delivery, accuracy and completeness of condominium documents
2. Encourage affordability by eliminating fees for the provision of condominium documents
3. Mandate standard budget protocol including strong compliance and enforcement mechanisms
4. Provide adequate notice requirements and rescission rights for consumers, particularly in relation to Material Changes and Final Possession Dates and limit the legitimate causes for final occupancy delays
5. Establish affordable, effective alternative mechanisms to the Courts for handling disputes/remedies

Condominiums – A Growing Market

Condominiums are an increasingly popular housing choice in Canada, and have accounted for a large share of the growth of homeownership over the last three decades.¹

- From 1981 to 2011, the number of owner-occupied condominiums in Canada increased nearly seven-fold
- Growth in the condominium stock represented upwards of 30 per cent of the total increase in owner-occupied dwellings in Calgary and Alberta
- About one in five of homes sold in Alberta are condos (one in three in Calgary and Edmonton)
- Alberta has more than 8,000 active condominium corporations

Issues and Recommendations

1. **Access to condominium documents at transaction time** – Buyers are often unaware of decisions that oblige them to special assessments or increased fees because the typical owner doesn't keep a repository of all the necessary condo documents. As a result, owners are unable to communicate the information to the buyer when they purchase a unit. While the current legislation prescribes that condo corporations must provide documents within 10 days after receiving a request, these documents are often held under the control of management companies. Currently, an owner's option is to turn to the courts for enforcement, which is often an intimidating and costly process.

Manitoba and Ontario have recently undergone reviews of their provincial condominium legislation, establishing models, themes and recommendations of merit from which Albertans can gain insight.

Glimpse at Other Provinces:

Ontario – [Bill 106](#), Protecting Condominium Owners Act, passed 1st reading on May 27, 2015.

Ontario's [Condominium Act Review Stage Two Solutions Report](#) (2013), promotes the use of online tools, as they can play a central role in education, access to information, transparency and accountability and community engagement. The report suggests access to some documents is a "basic right" and recommends that "clear requirements should be in place to ensure that corporate records are easily accessible" (p.8).

Manitoba – New Condominium Act and Regulations came into force on February 1, 2015.

Manitoba's [Act](#) (Sections 131-132) also requires corporations to keep complete and accurate records of corporation business in paper form or be able to produce them in a readable format electronically.

AREA is aligned with the conclusions and direction taken from these provinces and suggests the Alberta government take additional steps to improve access to information and documents for condominium owners, purchasers and mortgagees.

¹ Canada Mortgage and Housing Corporation. Canadian Housing Observer. (July 2015).

As condominium corporations are responsible under the Condominium Property Amendment Act (Bill 9) for providing purchasers with the required documents, a central repository would:

- Provide corporations with greater control of the documents and enhance their ability to fulfill their legislative duties.
- Improve access for owners and purchasers who rely on the documents to make informed decisions related to purchase/sale.
- Allow inaccuracies or incomplete information to be recognized and remedied in a more timely fashion
- Reduce barriers to ownership

AREA believes consumers should have access to complete information at transaction time and recommends the government facilitate and mandate the use of a central repository to improve timeliness, delivery, accuracy and completeness of condominium documents.

2. **Inconsistent fees charged for condominium documents** – Currently in Alberta, there is no regulation or consistency in the price condo corporations/owners/buyers must pay to obtain condominium documents. It can range from tens to hundreds of dollars per document - a cost that is often unexpected and difficult to afford.

Glimpse at Other Provinces:

Manitoba – Condominium corporations may charge reasonable fees for the labour and costs involved in copying the documents.

B.C. – No fee may be charged to an owner, a tenant or a person authorized by an owner or tenant for the inspection of a record or document under section 36 of the [Strata Property Act](#)². A 25 cent/per page fee may be charged for copies.

Ontario – Recommendations 71 and 72 in the Stage Two Solutions Report suggest access to some documents is a basic right and the documents should be provided free of charge. Where fees are deemed appropriate, such as for the retrieval and redaction of documents, they should be reasonable and designed to cover the costs of providing the service.

AREA recommends the Condominium Property Act Regulations prohibit the charge of additional fees for the provision of documents (with the exception of the estoppel certificate).

AREA believes the cost for producing and handling condominium documents by management companies should be included upfront in their monthly service fee, and the mechanism to ensure this is to prohibit the charge of additional fees for the provision of documents (with the exception of the estoppel certificate) in the Regulations.

² In B.C., The maximum fee that the strata corporation may charge for an Information Certificate, including required attachments, is \$35 plus the cost of photocopying, or other means of reproduction, up to 25 cents per page. The maximum fee that the strata corporation may charge for a Certificate of Payment is \$15.

Note: Barring this, AREA recommends a reasonable, regulated fee on an at-cost basis, such as 10-25 cents per page for copies of documents.

This would provide valuable information for condominium corporations when considering service proposals, put greater control in the hands of owners, provide consumers adequate opportunity to prepare closing costs, and most importantly, reduce barriers to ownership through reduction of financing issues and other delays at closing.

3. Develop standard budget protocol including strong compliance and enforcement mechanisms –

- a) **Standard Budget Protocol:** Currently, first budgets may be prepared in any manner that promotes sale. Estimates of condo contributions (fees) may be reported artificially low to appeal to buyers, but when the board is turned over to owners, it is often realized that these fees must be greatly increased to cover operational costs. A standard budget protocol would create a level playing field among condominium developers and provide purchasers a more accurate picture of the costs of operating a condo, including the monthly fees.

Glimpse at Other Provinces:

Manitoba – Under [Manitoba's new Act](#), Declarants who sell one or more units (or proposed units) must prepare a statement of financial projections (estimates) covering a 12-month period. The period must start with the first month all unit owners are required to contribute to the common expenses. If the financial projection turns out to have been too low, the developer has to pay the amount of the shortfall to the condominium corporation. (See [Clause 65\(1\)](#) for calculation.)

Ontario – The declarant is accountable to the corporation under this section for the budget statement that covers the one-year period immediately following the registration of the declaration and description. [See [Clauses 75\(1-4\)](#)]. The Stage Two Solutions Report recommends only differences greater than 10% of the common expenses disclosed to the buyer should constitute a material change to the budget statement.

B.C. – The owner developer must prepare an interim budget for the strata corporation for the 12 month period beginning the first day of the month following the month in which the first conveyance of a strata lot to a purchaser occurs. If the expenses accrued by the corporation during this period are 10% or greater than the operating expenses estimated in the interim budget, the owner developer must pay the difference. (See [Clauses 13-14](#)).

AREA recommends Alberta's Condominium Property Act Regulations establish a standard budget protocol, requiring developers to prepare a proposed budget for the corporation for a 12-month period, with a mandatory reserve fund category and be held financially responsible to the corporation in the event the expenses accrued by the corporation in its first year of operation are 10% or more than the operating expenses estimated in the proposed budget.

AREA is pleased to see that the changes proposed under clause 20.02 of Service Alberta's draft Phase 1 – Condominium Property Amendment Regulation outline proposed budget requirements for developers, including a developer responsibility for 15% of proposed budget discrepancies.

Understanding that this has been incorporated into Phase 1 of the draft, Alberta REALTORS® also recommend an additional level of detail where the proposed budget be prepared by a certified accountant using International Financial Reporting Standards (IFRS), the world-recognized reporting standard.

4. Adequate Notice Requirements and Rescission Rights:

- a) **Material Changes** – Changes are often made to a condominium project after a purchaser has completed at offer and before closing. This is typical through the development permit and building stages of any new development. Purchase contracts often contain clauses permitting the modification of certain elements of the property, such as cabinets or flooring. Some may be immaterial to buyers while others can affect the use or value of the property.

Alberta REALTORS® believe consumers must have a reasonable time frame to respond to notices of material changes and the purchaser must be provided the right to rescind the purchase contract in the event of a significant/substantial material change, such as major structural changes, significant bylaw changes, changes to the Final Possession Date, etc.

Glimpse at Other Provinces:

Manitoba - Sellers have a duty to tell buyers about any material changes to the information in the disclosure documents. A buyer who finds out about a material change – before taking possession of the unit – can cancel the purchase. Buyers can sue if they take possession and find a material change that wasn't disclosed.

Ontario - If a material change is not disclosed or the proper notification is not provided under the legislation, the purchaser may rescind the agreement of purchase within 10 day limit (subject to 74(6) of the Act).

AREA recommends developers be required to deliver notice of any known pending material change within 10 days of the material change becoming known and include language in the notice that the rescission period is opened up.

The developer should be required to deliver the notice required under subsection (1) to the purchaser within 10 days after the material change occurs (if unknown in advance) and, in any event, before the day the purchaser takes possession of the unit; and

The purchaser should be given 10 days to review the impact of the material change and to rescind the purchase.

- b) **Changing Occupancy Dates** – In the sale of new developments, significant time often passes between the initial signing of the purchase contract and occupancy. Projected occupancy dates can be changed on purchasers, often multiple times. Open disclosure and transparency around anticipated completion schedules of condominium developments is mutually beneficial for consumers and developers. It allows purchasers to better manage their financial commitments and helps developers manage purchaser expectations.

AREA recommends a Final Occupancy Date be required to be disclosed in the Purchase Contract. If adequate notice (60 days³) of delayed Final Occupancy Date is not provided, the purchaser should be able to rescind the agreement and/or apply to Courts or the Tribunal for remedy (damages); If the Final Occupancy Date is not met, purchaser should have the right to rescind the purchase contract (regardless of whether notice is provided).

AREA is pleased to see these changes proposed in Service Alberta's draft Phase 1 – Condominium Property Amendment Regulation.

Understanding that this has been incorporated into the draft Regulations, AREA also recommends that the Regulations limit the items considered to be legitimate causes for final occupancy delays to Act of God, by removing clauses 20.1(1)(g) and (h).

AREA believes Clauses 20.1(1)(g) and (h) in the proposed Condominium Property Amendment Regulation, which related to a lack of availability of labour or materials, offer developers an easy out and ability to transfer blame with little information available for purchasers to contest or prove otherwise.

- 5. Alternative dispute mechanisms to the courts** – Going to court can be an intimidating, lengthy and costly battle for consumers. AREA believes affordable, effective, alternative mechanisms to the courts, such as tribunals, should be available to handle disputes/remedies whenever possible (including disputes, for example, regarding occupancy dates).

Glimpse at Other Provinces:

Ontario – Ontario's Bill 106 allows for the establishment of a new Condominium Authority Tribunal for the resolution of disputes. It was recommended in the Stage Two Solutions Report that the Tribunal's services should include:

- The provision of information and advice to condo stakeholders by telephone or in person, and via online resources and self-help tools.
- A "Quick Decision Maker" Process (QDM) – To handle "small item" disagreements, with the authority to make quick, summary decisions on access to records, charge-backs, proxies, requisitions and owner's entitlement to vote.
- A "Dispute Resolution Office" – to deal with weightier "enforcement cases" via early neutral evaluations of disputes, expert advice, help reaching settlements and guidance on next steps in resolution process.

AREA recommends the Government consider Ontario's proposed dispute resolution model as they proceed in developing the Condominium Property Act Regulations related to Alberta's own Tribunal.

AREA will continue to advocate and collaborate with the government as they serve Albertans and explore necessary changes to these regulations.

³ Based on Ontario's Delayed Occupancy Warranty Program as recommended in Service Alberta's Discussion Guide: Proposals for Condominium Property Regulation Affecting Developers and New Condominiums (May 2015)

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Works Cited:

- CMHC. (July 2015). Canadian Housing Observer. Retrieved August 20, 2015 from:
http://www.cmhc-schl.gc.ca/en/hoficlincl/observer/upload/Observer_2015_Article_EN_Jul16.pdf
- Manitoba Government. (n.d.) Highlights of the new Manitoba Condominium Act: Changes in Condominium Laws. Retrieved September 3, 2015 from <http://www.gov.mb.ca/condo/newact/>
- Ontario Ministry of Government and Consumer Services. (2015). Ontario Increasing Protections for Condo Owners: Province Proposing Changes to Support Stronger Condo Communities. Retrieved September 3, from:
<http://news.ontario.ca/mgs/en/2015/05/ontario-increasing-protections-for-condo-owners.html>
- Public Policy Forum. (2013). Growing Up: Ontario`s Condominium Communities Enter a New Era. Condominium Act Review Stage Two Solutions Report. Retrieved September 3, 2015 from:
http://www.pppforum.ca/sites/default/files/CONDO_ACT%20STAGE%200.pdf
- Service Alberta. (2014). Improved consumer protection, governance for condos. Retrieved August 20, 2015 from:
<http://alberta.ca/release.cfm?xID=37440750ECCE0-F1DE-A250-2150AE911CBDD914>
- Service Alberta, Consumer Programs. (2015). Discussion Guide: Proposals for Condominium Property Regulation Affecting Developers and New Condominiums