



Submission to Service Alberta

Proposed Amendments:

Condominium Property Act - Regulations

Submitted by: Alberta Real Estate Association

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Condominium Property Amendment Act - Regulations

Alberta Real Estate Association

The Alberta Real Estate Association is the professional organization representing more than 10,000 working REALTORS® in the province. Collaborating and consulting with government and stakeholders at the provincial level, AREA advocates for actions which protect and support members, as well as the individuals, families, and communities they serve.

REALTORS® Support Greater Consumer Protection for Condominium Buyers/Sellers in Alberta

Condominium ownership is a complex transaction that involves more due diligence than single family ownership. Alberta REALTORS® believe the Condominium Property Act and supporting Regulations should provide consumers:

1. Strong compliance and enforcement protocols to enhance consumer protection
2. Adequate notice requirements and rescission rights prior to and/or in the event of significant Material Change
3. Affordable, effective, alternative mechanisms to the Courts for handling disputes/remedies
4. Access to complete information at transaction time
5. Elimination of additional fees for the provision of condominium documents
6. Clarity regarding sales person duties and responsibilities via agency disclosure requirements for unlicensed sales people

Alberta REALTOR® Positions

1. First Budget Requirements

With respect to Service Alberta's proposal to create a standard budget protocol, Alberta REALTORS® support the following:

- Developers would have to prepare and disclose a budget for a 12 month period to purchasers.

With respect to Service Alberta's proposal to create a standard budget protocol, Alberta REALTORS® support the following with some additional consideration/modification:

- Where "the initial budget would include a mandatory reserve fund category, with a minimum contribution of 15% of the total estimated expenditures for the corporation," Alberta REALTORS® believe consideration should be given to increasing this percentage to 20% for conversion units.
- Where "the reserve fund contribution would remain at 15% until such time that a reserve fund study is completed and a funding plan is implemented," Alberta REALTORS® believe that, for conversions, the Regulations should include the requirement to adjust the reserve fund contribution to reflect financial requirements identified in the reserve fund study.
- Where "the expenses accrued by the corporation in its first year of operation are 15% or more than the operating expenses estimated in the proposed budget, the developer must pay the difference to the

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corporation within 60 days after the first annual general meeting,” Alberta REALTORS® believe the Regulations must provide a means of collecting these funds in the event the developer goes bankrupt or the development company is shut down after the sale. Condo boards should be offered financial protection via bonds, the requirement for the developer to hold money in trust, or by other regulated/licensing means.

- Observation: *Clause 10. states that, “notwithstanding anything to the contrary in a bylaw, where units are located in a building in which one or more units have been transferred to a purchaser, the developer must pay contribution in respect of each unit in the building it owns on the same basis as owners of other units are required to pay contributions. This confirms the requirement of ensuring there is an accurate Budget estimation process contained within the Regulations. The developer may, by underestimating the condo fees, or by referring to such fees as “maintenance” fees, limit their contribution exposure.*

With respect to Service Alberta’s proposal to create a standard budget protocol, Alberta REALTORS® also believe:

- Developers should be required to provide a statutory declaration that confirms in writing that the budget has been prepared in accordance with the Act and Regulations, using accepted accounting practices and accurately reflects the finances of the corporation and the actual condo fees payable by the unit owner.
- The Regulations should contemplate punitive action against developers who do not provide realistic, responsible first budgets or for deliberate misrepresentation (via the Tribunal or other Regulatory means) and against property managers involved in the creation and or misrepresentation of such budgets (via RECA).

2. Additional Purchase Disclosure

Alberta REALTORS® support Service Alberta’s proposal to regulate the following additional disclosure requirements as per Clause 12(1)m in the *Condominium Property Amendment Act*:

- If the corporation is a leasehold condominium corporation, the term of the lease and any other notable aspects of the lease.
- The name and address for service of the developer ~~and the legal land description of the property or the proposed property.~~
- The name and address for service of the prescribed trustee who holds deposits under 14(6), if applicable.
- A general description of the buildings and structures the developer intends to construct on the entire parcel, including the number of units, buildings and recreational and other amenities that are anticipated together with all conditions that apply to the provision of amenities.
 - Comment: This requirement is redundant if the project is complete.
- A statement whether a building on the property or a unit or proposed unit has been converted from a previous use and the nature of the previous use.
- A statement whether one or more units or proposed units is intended for commercial or other purposes not ancillary to residential purposes.
- A statement setting out any fees or charges, if any that the corporation is required to pay the developer or a third party for the use of any units or proposed units or any other property located on the parcel, or any service that will be provided to the corporation.

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- If construction of any amenities is incomplete, a schedule of the proposed commencement and completion dates.
 - Alberta REALTORS® recommend implementing holdback or similar provision to cover completion of these amenities.
- Proof that the developer has a registered interest in the land upon which the condominium is to be developed or a statement that the developer has no registered interest in the land, as the case may be.
- A statement setting out information about the buyer's right to pursue remedies set out in this regulation in the event of a material change.
- A statement that specifies a) the number and type of parking space(s) located on the common property or property of the corporation and other exclusive possession areas that are assigned to the unit being purchased b) charges associated with use of the parking space and exclusive possession area.
- In the case of a bare land development, a description of any facilities located on the parcel and a description of any utilities, services or other costs that the corporation must pay for, including provision for water, sewage, electricity and natural gas, and the estimated cost of maintaining, servicing or replacing these facilities and utilities.

Alberta REALTORS® also believe developers should have to deliver the following documents/information to purchasers prior to selling, or agreeing to sell, a condo unit or proposed unit, including a checklist of these documents:

Disclosure

- Budget, which is accurate with no deliberate misrepresentation;
- Tentative and Final Occupancy Dates (see #6 in this document);
- Statement regarding disclosure of latent defects;
- Statement regarding rescission rights in relation to material changes; and
- The existence of any 3rd party contracts (i.e. telecommunications, common use agreements, etc.).

Other Information

- Description of condo type(s);
- Registered size (i.e. Is the balcony included in the registered sqft? Is this common property?);
- Definition of Common Property;
- Information on metered water (i.e. Location of meters and explanation of common expense);
- Guidelines/process used in the budget creation;
- Any existing environmental assessments;
- Number of rental units occupied in a project (in the past, CMHC would not lend on units if the rental ratio was too high); and
- Any court proceedings or arbitration in which the developer/condo corporation is a party and any judgments or orders against the developer/condo corporation as well as any unsatisfied judgment or order for which the developer/corporation is liable.

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Records/Reports

- Reserve fund report – Regulations regarding establishment, maintenance, reporting and use of Fund required;
- Agreements for assigned parking/storage and basis of assignment; and

With respect to some of the items noted above, Alberta REALTORS® also offer the following:

- With respect to the Budget, a standard budget protocol (as proposed by Service Alberta) should be established for consistency and to create a level playing field among condominium developers. The budget should also include:
 - The name and address of the party that created the budget;
 - A statutory declaration on the accuracy of the budget and condo fees; and
 - Disclosure if the contributions are likely to change/increase (including an estimate of how much) after the corporation is turned over to the owners and that bylaws regarding pets/other may change.
- With respect to 3rd party contracts, it is important to note that, while developers are required to provide “all agreements to which the corporation is a party at the meeting of the corporation - 16.1(1)(d)”, this meeting to elect the first board is not required until 90 days from the day that the certificates of title to 50% of the units have been issued (29). A purchaser entering into a purchase contract with the developer prior to this event would not be aware of the obligation of the Corporation contained in these 3rd party agreements.
 - *Observation: Alberta REALTORS®, who are licensed under the Real Estate Council of Alberta, are subject to agency, identify and conflict of interest disclosure requirements. There are no such requirements for developers or their employees.*

3. Material Change (Notice, Process and Timelines)

Alberta REALTORS® support the following:

- A definition for material changes should be provided in the Regulations and further legal consideration to whether or not a “reasonable purchaser” should be the optimal standard with consumer protection in mind.
- With respect to notice of material change:
 - Consumers must have a reasonable time frame to respond to notices of such material changes effectively;
 - Developers should be required to deliver notice of any known pending material change within 10 days of the material change becoming known, and ideally, prior to the occurrence of the material change;
 - The developer shall 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 to determine its significance and the purchaser’s willingness to proceed/rescind.
- With respect to rights of rescission:
 - The purchasers’ rights of rescission must be strictly defined as they relate to material changes;

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- The purchaser must be provided the right to rescind the purchase contract in the event of a significant/substantial material change (consider attributing to a minimum defined value), such as major structural changes, significant bylaw changes, changes to the Final Possession Date, etc;
- The developer should be entitled to make minor changes to any of the documents provided to the purchaser as part of the developer disclosure package.

Minor changes are changes which:

- a) Do not significantly detract from the appearance or the value of the unit; and
 - b) Are of a nature that a reasonable purchaser, on an objective basis, would not have changed its decision to purchase the unit if the purchaser was aware of the change.
- Purchasers should not have the opportunity to rescind the purchase contract if the material change involves materials/fixtures/appliances being substituted with those of equal or greater value if adequate notice is provided; and
 - In the event of a dispute, the purchaser should be able to seek additional remedies (damages, specific performance etc.) through the Tribunal.
- Developers should be required to obtain the required development permits prior to marketing/selling the properties. The potential for major material changes after sale, such as moving the location of buildings, is significantly less if the development permit is in hand.

4. Occupancy Dates

With respect to the Notice requirements included in Service Alberta's proposed "Occupancy Disclosure Logic Model" (see attached), Alberta REALTORS® support the following:

- 60 days notice for delays to Tentative Occupancy Dates beyond the 30 day closing period;
- If notice of delayed occupancy is not provided before the Tentative Occupancy Date, the purchaser may rescind the contract;
- A Final Occupancy Date must be agreed to in the Purchase Contract, subject to the Regulations;
- If adequate notice (60 days) of delayed Final Occupancy Date is not provided, purchaser may rescind agreement and/or apply to Courts or the Tribunal for remedy (damages);
- If the Final Occupancy Date is not met, purchaser has right to rescind the purchase contract (regardless of whether notice is provided); and
- The Final Occupancy Date may be extended by mutual agreement.

With respect to the Notice requirements included in Service Alberta's proposed "Occupancy Disclosure Logic Model" (see attached), Alberta REALTORS® support the following with some additional consideration/modification:

- Where if notice of delay is provided late (during the period beyond the 60 day notice period), purchasers may apply to Courts for remedy (damages), Alberta REALTORS® believe application to the Tribunal should be considered in addition to the Courts.

Observation: In the sale of new developments, significant time often passes between signing and occupancy.

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5. Transfer of Information to New Board

Alberta REALTORS® support Service Alberta’s proposal that “as built drawings” be provided by the developer to the corporation whenever possible and without charge at the meeting of the corporation convened under section 29.

6. Prescribed Trustee

Alberta REALTORS® support Service Alberta’s proposal that a “Prescribed Trustee” refers to lawyers/law firms and believe:

- The Regulations need to provide for transfer of deposits in the event the developer changes law firms;
- A time frame for depositing money into Trust must be confined to within three business days after receipt of the purchase contract by the Prescribed Trustee; and
- The Regulations need to provide for “termination by mutual consent” under clause 6.3, without Release of Trust Money automatically going to the developer.

7. Access to Condominium Documents

Alberta REALTORS® believe consumers should have access to complete information at transaction time.

Buyers are often unaware of decisions that oblige them to special assessments or increased fees because this information is not communicated in a timely manner to the owners who, as a result, are unable to communicate the information to the buyer when they purchase the unit.

The Government should facilitate and mandate the use of a central repository to improve timeliness of document delivery, accuracy and completeness of condominium documents.

8. Fees for Condominium Documents

Alberta REALTORS® believe that the condominium owner has already paid, in their condo fees, for the collection and creation of the information required (with the exception of the estoppel certificate).

Fees should not be charged to condominium owners by management companies for providing condominium documents. This cost should be included upfront in their monthly service fee. (Note: Barring this, REALTORS® would accept a regulated, normal fee on an at-cost basis, such as 10 cents per page.)

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

Observation: While the Condominium Property Act requires condominium corporations to provide prescribed information or documents within 10 days after receiving a request [44(1)], they are often held under the control of the management company, restricting the ability of corporations to comply.

9. Building Assessment Report (BAR) Requirements for Conversions

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Alberta REALTORS® believe the rescission period should be extended as per 13(1) in the event the summary BAR provided in 12(1)(j)(i) identifies potential concerns and the purchaser requests a complete BAR (12(3)).

- If the developer chooses to provide the complete BAR upfront, the summary should still be provided.

Alberta REALTORS® believe any existing environmental issues should be addressed in the BAR.

10. Exemption for Specified Agreements

Alberta REALTORS® do not support tele-communications or mutual use agreements being exempt from the provisions under section 17 of Bill 9 that permit the first elected board to cancel agreements entered into by the developer or the interim board.

- Condo Boards should have the ability to cancel these types of ancillary agreements as well as other types of utility or service agreements if it is in the best interest of the corporation and its owners to do so.
- Developers may continue to own and control utility infrastructure and/or recreational facilities etc. with the intention of charging the corporation for those services.

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