

Condominium Property Act
CONDOMINIUM PROPERTY AMENDMENT REGULATION

1 The *Condominium Property Regulation* (AR 168/2000) is amended by this Regulation.

2 Section 1 is amended

(a) in subsection (1) by adding the following after clause

(a):

(a.1) “delivery and distribution systems” has the same meaning as in section 1(1)(m) of the *New Home Buyer Protection Act*;

(b) by adding the following after subsection (1):

(1.1) For the purposes of section 16.1(1)(b)(ii) of the Act, “as built drawings” means a document that shows the actual location of

(a) the delivery and distribution systems to which the *Safety Codes Act* applies, including electrical, gas, plumbing, heating, ventilation and air conditioning systems, and

(b) any other pipes, wires, cables, chutes or ducts or other systems that provide for the passage or provision of services.

3 Section 3(b)(i) is amended by adding “, (1.1)” after “(1)”.

4 The following is added after section 20:

Part 1.1
Duties of a Developer

Additional information provided to purchaser

20.01 For the purposes of section 12(1)(m) of the Act, the developer shall deliver the following additional information and documents to the purchaser:

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- (a) a table of contents that clearly lists all the information and documents that must be delivered to the purchaser under section 12(1) of the Act;
- (b) the name, mailing address and address for service of the developer;
- (c) the legal land description of the development or proposed development;
- (d) if the unit being sold is located on a parcel that is leased land, the term, rent and renewal rights of and parties to the lease;
- (e) the name and address for service of any prescribed trustee who holds deposits under section 14(6) of the Act;
- (f) if the unit being sold is in a development that is not substantially complete, the floor plan for the building in which the unit is or will be contained and a summary of the materials to be used to finish the unit;
- (g) if the unit being sold is in a development being built in phases, a copy of the phased development disclosure statement required under section 35;
- (h) if the unit being sold is a conversion unit,
 - (i) a description of the previous use of the building, and
 - (ii) a copy of the reserve fund study and reserve fund report for the corporation;
- (i) a statement indicating any registrations that are to remain on the title to the unit being sold;
- (j) a statement indicating whether one or more units or proposed units in the parcel may be used for purposes other than residential and ancillary purposes;
- (k) a list of any fees, rents or other charges that the corporation is required to pay to the developer or a

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third party for the use of any units, proposed units, common property or other real or personal property of the corporation;

- (l) where a condominium plan has not been registered,
 - (i) if the developer has an interest in the land on which the condominium plan is to be registered, a copy of
 - (A) the valid certificate of title naming the developer as the person entitled to the land on which the plan is to be registered, or
 - (B) the valid registration showing the developer has an interest in the land on which the plan is to be registered,
 - or
 - (ii) if the developer has no registered interest in the land on which the plan is to be registered, a statement to that effect;
- (m) where there are bare land units on the parcel, a description of any utilities or services that are to be paid for by the corporation or required to be repaired, maintained or replaced by the corporation, including, without limitation, water, sewage disposal, electricity and natural gas;
- (n) if the building or land is being developed in phases,
 - (i) future estimates of the total contributions, prorated based on unit factor or a basis provided for in the bylaws, projected for each 12-month period beginning with the date on which the developer expects a future phase to be ready for occupancy, and
 - (ii) where total contributions referred to in subclause (i) are projected to increase from one set of estimates to the next, information supporting or explaining the increase.

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Proposed budget

20.02(1) For the purposes of section 12(1)(l) of the Act, if no budget has been prepared under section 30(4) of the Act, the developer shall deliver a proposed budget to a purchaser.

(2) A proposed budget must cover the 12-month period beginning with the first month in which the developer expects contributions to be levied at regular intervals by the corporation under section 39 of the Act.

(3) A proposed budget must contain the following information for the 12-month period specified in the proposed budget:

- (a) the projected total revenue of the corporation;
- (b) the projected total expenses of the corporation;
- (c) the specific projected expenses under the following categories:
 - (i) maintenance and repairs;
 - (ii) insurance;
 - (iii) utilities;
 - (iv) condominium management services;
 - (v) other services;
 - (vi) the reserve fund study;
- (d) the reserve fund allocation;
- (e) a description of each product or service to be provided to the condominium corporation during the 12-month period specified in the proposed budget for which an expense might reasonably be expected, and the projected amount of the expected expense;
- (f) the name of the individual or business that prepared the proposed budget, and the date on which the proposed budget was prepared.

(4) The person who prepares the proposed budget may include an estimate for inflation projected for the period of

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time between the preparation of the proposed budget and the preparation of the budget under section 30(4) of the Act.

(5) The reserve fund allocation set out in the proposed budget under subsection (3) must be at least 15% of the projected total revenue of the corporation for that 12-month period, or in the case of a conversion, a higher amount as recommended by the reserve fund study.

(6) A proposed budget may be delivered to a purchaser only until a budget for the corporation's fiscal year is prepared by the corporation under section 30(4) of the Act.

Budget

20.03(1) For the purposes of section 12(1)(1) of the Act, if a budget has been prepared under section 30(4) of the Act, the developer shall deliver the budget to a purchaser.

(2) The budget must contain the following information for the fiscal year specified in the budget:

- (a) the projected total revenue of the corporation;
- (b) the projected total expenses of the corporation, including specific expenses under the following categories:
 - (i) maintenance and repairs;
 - (ii) insurance;
 - (iii) utilities;
 - (iv) condominium management services;
 - (v) other services;
 - (vi) the reserve fund study;
- (c) the projected total expenses of the corporation prorated per unit factor.

Consequences of underestimated expenses

20.04(1) If the actual total expenses incurred by the corporation in the 12-month period beginning with the first month in which contributions are first levied on owners at regular intervals are more than 15% above the projected total expenses of the corporation as set out in the proposed budget,

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the corporation shall provide a notice to the developer within 45 days after the first annual general meeting convened in accordance with section 30 of the Act, setting out the difference between the actual and projected total expenses.

(2) Subject to subsection (3), within 60 days after receiving a notice under subsection (1), the developer shall pay the entire difference between the actual and projected total expenses, as set out in the notice the developer shall pay the corporation.

(3) This section does not apply to underestimated expenses that results from

- (a) an expense that was not reasonably foreseeable at the time the proposed budget was prepared,
- (b) changes in insurance premiums for any reason, respecting insurance required by the Act and this Regulation,
- (c) changes in utility charges from the market rates at the time of the proposed budget, and
- (d) charges for legal services provided to the corporation after the meeting convened under section 29 of the Act was held.

(4) If a developer delivers more than one version of the proposed budget, the proposed budget that contains the lowest projected total expenses of the corporation is to be used for determining the difference between actual and projected total expenses for the purposes of subsection (1).

Material change

20.05(1) For the purposes of section 13.1 of the Act, “material change” means a change or series of changes in information or a document provided under section 12 of the Act that a reasonable purchaser on an objective basis would have regarded collectively as sufficiently important to the decision to purchase a unit or proposed unit that it is likely to lead a reasonable purchaser to choose not to enter into the purchase agreement.

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(2) If a material change arises respecting a unit or proposed unit, a purchaser may file an originating application with the Court

- (a) within 60 days of receiving notice from the developer under section 13.1(1) of the Act, or
- (b) if no notice is provided under section 13.1(1) of the Act, within 60 days from the date the purchaser became aware or reasonably ought to have become aware of the material change.

(3) In any event, an originating application must be filed within 12 months after the certificate of title to the unit is registered in the name of the purchaser.

(4) The Court may order any relief that it considers appropriate in respect of the originating application, including, without limitation, damages or rescission of the purchase agreement.

(5) A difference between the projected expenses in the proposed budget or budget and the actual expenses for the 12-month period beginning with the first month in which contributions are first levied at regular intervals does not constitute a material change for the purposes of section 13.1 of the Act.

Part 1.2 Occupancy Date

Definitions

20.06 For the purposes of this Part and section 12(1)(k) of the Act,

- (a) “final” in reference to an occupancy date means either the later date in a range of dates by which the purchaser may commence occupancy of the unit, or the single date fixed as the date by which the purchaser may commence occupancy of the unit, as provided in an occupancy date statement;
- (b) “occupancy date statement” means a statement, delivered by a developer to a purchaser in accordance with section 12(1)(k) of the Act, that sets a final

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occupancy date and may set a tentative occupancy date;

- (c) “tentative” in reference to an occupancy date means the earlier date in a range of dates by which the purchaser may commence occupancy of the unit, as provided in an occupancy date statement or in a notice referred to in section 20.08(1), whichever was provided later.

Form of occupancy date statement

20.07 The occupancy date statement must be in the form, if any, established by the Director.

Delay in occupancy

20.08(1) Where a developer becomes aware that a unit will not be ready for occupancy within 30 days after the tentative occupancy date, the developer shall provide the purchaser with a written notice of the revised tentative occupancy date.

(2) The developer shall ensure that the notice referred to in subsection (1) is delivered as soon as possible, and in any event no later than 60 days before the tentative occupancy date.

(3) Despite any provision to the contrary in the purchase agreement, the purchaser may pursue an action in damages against a developer for damages attributable to the delay in occupancy if the developer fails to comply with subsection (1) and (2).

(4) A revised tentative occupancy date must not be later than the final occupancy date specified in the occupancy date statement.

Consequences of delay in occupancy

20.09(1) If a unit is not ready for occupancy within 30 days after the final occupancy date, the purchaser has the right to rescind the purchase agreement at any time before the purchaser receives a revised occupancy date statement setting out a new final occupancy date.

(2) A purchaser has the right to rescind a purchase agreement within 10 days after receipt of a revised occupancy date statement referred to in subsection (1).

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(3) The purchaser may rescind the purchase agreement under subsection (1) or (2) by providing the developer with a written notice rescinding the purchase agreement.

(4) A developer or prescribed trustee, as the case may be, shall refund all money paid by the purchaser within 15 days of receipt of the purchaser's written notice rescinding the purchase agreement.

Delay for legitimate cause

20.1(1) Despite sections 20.08 and 20.09, a developer may delay the final occupancy date, without liability for damages and without giving rise to a right to rescission by a purchaser under section 20.09, if one of the following events causes the unit not to be ready for occupancy by the stated final occupancy date:

- (a) fire;
- (b) explosion;
- (c) flood;
- (d) events leading to a declaration of an emergency under the *Emergency Management Act*;
- (e) events leading to a declaration of a public emergency or disaster for the purpose of section 7 of the *Fiscal Management Act*;
- (f) riot, vandalism or malicious acts;
- (g) a strike that causes a delay in the availability of labour or materials;
- (h) a lack of availability of labour or materials, if the circumstances are outside the control of the developer;
- (i) a delay in the issuance of a permit or approval required by law, if the issuing authority does not issue the decision respecting the permit or approval within the timelines required by law.

(2) If a developer delays the final occupancy date under subsection (1), the developer shall

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- (a) provide the purchaser with notice of the delay and the cause of the delay, as soon as the developer becomes aware, and
- (b) no later than 30 days after the notice in clause (a), provide the purchaser a written notice with a new final occupancy date, which reflects the reasonable time required to remedy the results of the event that caused the delay in occupancy.

Agreements, damage claims not precluded

20.11(1) Nothing in section 20.09 or 20.1 precludes a purchaser and developer from agreeing to an occupancy date different from that set out in an occupancy date statement, a revised occupancy date statement or written notice.

(2) A remedy under section 20.09 or 20.1 does not preclude a purchaser from pursuing a claim in damages for the damages caused by the delay in occupancy.

Part 1.3

Documents Provided to Corporation

Documents provided to corporation

20.2 For the purposes of section 16.1 of the Act, the developer or the interim board, as the case may be, shall provide the following additional documents to the corporation:

- (a) copies of all plans, documents and amended documents that are required to be prepared under the *Safety Codes Act* in respect of buildings on the parcel;
- (b) a document setting out a list of all outstanding orders made pursuant to the *Safety Codes Act* or the *Municipal Government Act* in respect of the parcel or any buildings on the parcel;
- (c) a document setting out the details of any oral agreements that bind or will bind the corporation;
- (d) a copy of the condominium plan and any plan of redivision registered in a land titles office;

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- (e) copies of all manuals, schematic drawings, operating instructions, service guides, manufacturers' documentation, records of service and repairs and other similar information or documentation available to the developer respecting the construction, installation, operation, maintenance, repair and servicing of any common property or real or personal property of the corporation;
- (f) a document setting out a list of the members of the interim board of directors;
- (g) a document setting out a current list of all owners, with each owner's corresponding
 - (i) unit number, municipal address, address as registered in a land titles office and any alternative address for service provided by the owner to the corporation,
 - (ii) unit factors for each unit, and
 - (iii) exclusive possession areas;
- (h) a document setting out a list of the names and addresses of all mortgagees who have given written notice to the corporation under section 26(3) of the Act;
 - (i) a document setting out a list of the names of each tenant, the unit number being occupied by the tenant, and the amount of any deposit paid by the owner of a rented unit to the corporation under section 53 of the Act;
- (j) a copy of any rules governing the corporation;
- (k) a copy of any unsatisfied judgment of a court or another decision-maker in proceedings to which the corporation is a party;
- (l) a copy of any legal or other professional advice or opinions paid for by the corporation;
- (m) copies of any proposed budget, budget or annual budget of the corporation, any financial statements

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- prepared for the corporation's current fiscal year and any financial statements in the developer's possession or control respecting previous fiscal years;
- (n) copies of all records respecting the bank, trust company, treasury branch or credit union accounts holding the reserve fund, operating funds or any other funds of the corporation;
 - (o) copies of all tax records of the corporation;
 - (p) a copy of each lease, licence or other instrument granting an owner the right to exclusive possession of an area under section 50 of the Act;
 - (q) a copy of any easement or restrictive covenant that
 - (i) burdens the parcel, or
 - (ii) will burden the parcel in respect of fixtures that are planned but not yet installed;
 - (r) a copy of all current insurance policies obtained by or on behalf of the corporation, and the certificate respecting each insurance policy;
 - (s) a copy of all caveats registered against units that are owned by the corporation or intended to be transferred to the corporation.

Part 1.4 Payments Held in Trust

Trustee

20.3 For the purposes of section 14 of the Act, a person or partnership that meets the following requirements is prescribed as a trustee:

- (a) the person, professional corporation with which the person is associated or partnership
 - (i) is an active member of the Law Society of Alberta,
 - (ii) is a holder of a permit issued under Part 8 of the *Legal Profession Act*, or

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- (iii) is comprised of partners who are active members of the Law Society of Alberta,

as the case may be,
- (b) no suspension is in effect under section 63 of the *Legal Profession Act* in respect of
 - (i) the person,
 - (ii) the voting shareholder of the professional corporation, or
 - (iii) the partners of the partnership, with the result that no partner is permitted to operate a trust account,

as the case may be;
- (c) the person or partnership is approved to operate a trust account, under the rules established by the Law Society of Alberta under the *Legal Profession Act*;
- (d) the person or each partner of the partnership, as the case may be, is in good standing in respect of Assurance Fund requirements under section 89(4) of the *Legal Profession Act*.

Notification by prescribed trustee

20.31(1) Within 10 days of receiving money to be held in trust under section 14 of the Act, a prescribed trustee shall notify the purchaser, at the purchaser's address for service, that the purchaser's deposit is held on deposit in the prescribed trustee's trust account.

(2) Nothing in this Regulation precludes a purchaser, with the developer's agreement, from retaining a prescribed trustee to hold a purchaser's deposit.

(3) A prescribed trustee retained under subsection (2) shall notify the developer that the purchaser's deposit has been deposited into the prescribed trustee's trust account.

Release of trust money

20.32(1) A prescribed trustee shall not release money that is held in trust under section 14 of the Act except in accordance with this section.

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(2) A prescribed trustee may release money held in trust to a developer where

- (a) the money is applied to the purchase price as part of the process of transferring title to the unit for which the deposit money was paid,
- (b) the money is secured by a purchaser's protection program, as defined in Part 7, that has been approved by the Minister under section 14(10) of the Act, or
- (c) the developer is entitled under section 14(12) of the Act to a reduction in the money held in trust equal to security provided under an enactment referred to in section 14(12) of the Act.

(3) Despite subsection (2), a prescribed trustee shall not pay money held in trust under section 14 of the Act to a developer until after the expiry of the time period set out in section 13(1) of the Act.

(4) A prescribed trustee may release money held in trust to a purchaser where the purchase agreement is terminated after

- (a) the purchaser exercises rescission rights under the Act,
- (b) a condition imposed by the purchaser has not been removed or satisfied within the time allowed by the purchase agreement, or
- (c) the developer exercises a right of termination under the purchase agreement.

(5) A prescribed trustee may release money held in trust

- (a) where the parties have mutually agreed to the release,
- (b) in accordance with a decision issued by a court ordering the payment of the money,
- (c) where the money is required or permitted to be paid into Court, or
- (d) subject to subsection (6), to one of the parties, where the other party has breached the purchase agreement

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in a way that results in a contractual right to treat the agreement as ended.

(6) A prescribed trustee may release money under subsection (5)(d) only if the following conditions are met:

- (a) the party alleging the breach serves a notice of the alleged breach on the other party and the prescribed trustee;
- (b) the party served with the notice of the alleged breach does not serve a response on the alleging party and the prescribed trustee within 30 days of service of the notice of the alleged breach.

(7) A prescribed trustee may transfer the money held in trust to another prescribed trustee.

(8) A prescribed trustee who makes a transfer under subsection (7) shall notify the purchaser and developer of the transfer.

(9) Where money is paid to a prescribed trustee in error, the prescribed trustee may refund the money and, after making the refund, is not subject to any other provisions under this section.

Trust account records

20.33(1) For the purposes of section 14(7.1) of the Act, a prescribed trustee shall keep a complete and accurate financial record of the following information respecting the account for each purchaser:

- (a) the name of the purchaser;
- (b) the amount of each deposit made into trust;
- (c) the date of each deposit;
- (d) the total amount of money currently held in trust;
- (e) the amount of interest earned on money held in trust;
- (f) a description of each disbursement made from money received or held in trust.

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- (2) For the purposes of the Act, a trustee shall keep the records required under subsection (1)
- (a) for the entire time that the purchaser's deposit money is in the trust account, and
 - (b) where all of the money is paid out of the account, for at least 5 years from the date on which money is last paid out of the trust account.
- (3) Nothing in this Regulation precludes
- (a) a prescribed trustee from requiring information be provided by a purchaser or a developer for the purposes of determining compliance with an enactment of Alberta or Canada,
 - (b) a prescribed trustee from refusing to accept money for deposit, or
 - (c) a custodian under the *Legal Profession Act* from assuming responsibilities of a prescribed trustee in accordance with an order under that Act.

Part 1.5 Termination of Agreements

Agreements that cannot be terminated

20.4 For the purposes of section 17.1 of the Act, the following agreements cannot be terminated by the corporation:

- (a) easements;
- (b) restrictive covenants;
- (c) exclusive possession agreements entered pursuant to a bylaw or other instrument;
- (d) mutual use agreements among corporations;
- (e) contracts for the provision of electricity or natural gas;
- (f) agreements or leases respecting the development of an alternative or renewable energy system.

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5 Section 43 is amended by striking out “sections 12 and 13” and substituting “section 12”.

6 The following is added after section 45:

**Part 3.1
Conversions**

Definitions

45.1 In this Part, “building envelope” has the same meaning as in section 1(1)(g) of the *New Home Buyer Protection Act*.

Conduct of building inspection, survey

45.2(1) A person engaged to prepare a building assessment report in respect of a building in a conversion shall, prior to the preparation of the building assessment report,

- (a) conduct a non-invasive inspection of the real property of the corporation, the common property and managed property in the building, and
- (b) conduct a survey of occupants, if any, of the building, respecting any observed deficiencies in or damage to the building.

(2) A person referred to in subsection (1) may retain the services of any expert or professional that the person considers necessary for the purposes of conducting an inspection and preparing a report.

Content of building assessment reports for conversions

45.3(1) A building assessment report in respect of a conversion must contain the following for each building that contains units:

- (a) the identification, location and description of
 - (i) each delivery and distribution system in the building,
 - (ii) any mechanical system in the building,
 - (iii) the building envelope, including
 - (A) the roofing and sub-roof installation, including water and vapour control

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systems, insulation and venting for attic space and soffits,

(B) cladding components,

(C) balcony membranes and sealants, and

(D) parkade membranes and sealants that are accessible for non-invasive visual inspection;

(iv) the water drainage system around the building, including

(A) eavestroughing,

(B) grade and landscaping drainage courses,

and

(v) the load-bearing parts in the building as the building was built;

(b) the identification of any deficiencies in or damage to the items listed in clause (a)(i) to (v);

(c) a report on the results of the survey of occupants conducted under section 45.2(1).

(2) A building assessment report may

(a) indicate limitations of the inspection,

(b) include disclaimers about the information contained in the report, and

(c) provide recommendations respecting further investigations that are considered appropriate.

(3) A building assessment report must be prepared not earlier than 180 days before the sale or offering for sale of a unit in the building.

Summaries respecting deficiencies in conversions

45.4 The person engaged under section 21.1(2) of the Act to prepare the building assessment report shall prepare and deliver to the developer

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- (a) the building assessment report, and
- (b) a summary of the deficiencies or damage referred to in section 45.3(1) that were identified, located and described in the building assessment report.

Exemption respecting non-residential conversion

45.5 This Part and section 21.1 of the Act do not apply in respect of a conversion in which all units in the registered condominium plan are non-residential units.

7 Section 52 is amended by striking out “interim board” wherever it occurs and substituting “temporary board”.

8 The following is added after section 73:

**Part 8.1
Administrative Penalties**

Notice of administrative penalty

73.1 A notice of administrative penalty must be given in writing and must contain the following information:

- (a) the name of the person to whom the administrative penalty is issued;
- (b) identification of the provision of the Act or regulation that was contravened or not complied with;
- (c) a description of the contravention or failure to comply identified under clause (b);
- (d) the amount of the administrative penalty;
- (e) the time period within which the administrative penalty must be paid;
- (f) a statement describing the right to appeal to the Minister under section 78.5 of the Act and the particulars of how the appeal is to be made and the time in which it is to be made.

**Part 8.2
Appeals**

Appeal fee

73.2 The fee for an appeal made pursuant to section 78.5 of the Act is the lesser of

- (a) \$1000, and
- (b) half of the amount of the administrative penalty set out in the notice of administrative penalty.

9 Section 76 is amended by striking out “18%” and substituting “10%”.

10 Section 81 is amended by striking out “September 1, 2016” and substituting “August 31, 2019”.

11 Schedule 1 is amended in Form 8 by adding “New or” after “Notice of”.