

# FOR DISCUSSION ONLY

## ALBERTA REGULATION 168/2000

### Condominium Property Act

#### CONDOMINIUM PROPERTY REGULATION

##### Interpretation

**1(1)** In this Regulation,

- (a) “Act” means the *Condominium Property Act*;
- (a.1) “delivery and distribution systems” has the same meaning as in section 1(1)(m) of the *New Home Buyer Protection Act*;
- (a.2) “plan of redivision” means a condominium plan registered pursuant to section 20 of the Act;
- (a.3) “purchaser” includes, for the purposes of section 44 of the Act and this Regulation, a person who has entered into
  - (i) a purchase agreement, respecting a condominium unit, or
  - (ii) an agreement to purchase a leasehold interest in a condominium unit.
- (b) “Registrar” means the Registrar of Land Titles.
- (c) repealed AR 151/2006 s2.

**(1.1)** For the purposes of section 16.1(1)(b)(ii) of the Act, “as built drawing” means a document that

- (a) shows all substantial changes made in the specifications and working drawings during the construction process in respect of
  - (i) the delivery and distribution systems to which the *Safety Codes Act* applies, including electrical, gas, plumbing, heating, ventilation and air conditioning systems, and
  - (ii) any other pipes, wires, cables, chutes or ducts or other systems that provide for the passage or provision of services,

and

- (b) identifies the actual location of the systems referred to in clause (a).

**(2)** For the purposes of section 14(1)(b) of the Act, the following are the requirements to be met in order for a person to be a cost consultant:

- (a) in the case of an individual, that individual must be, based on reasonable and objective criteria, knowledgeable with respect to
  - (i) the costs of construction of units and common property that are the subject of section 14 of the Act, and
  - (ii) the determination as to when the construction of those units and that common property, as the case may be, is substantially completed;

Gives more guidance to condominium corporations about who qualifies as a “purchaser” for document requests.

# FOR DISCUSSION ONLY

- (b) in the case of a corporate entity, that corporate entity must, in carrying out the functions of a cost consultant, employ or otherwise retain the services of an individual to carry out those functions who meets the requirements provided for under clause (a);
- (c) in carrying out the functions of a cost consultant in respect of a unit or common property, a person must act at arm's length from the developer of the unit or common property.

(3) If expressions used in this Regulation are not defined in this Regulation but are defined in the Act, those expressions have the same meanings in this Regulation as assigned to them in the Act.

(4) If expressions used in this Regulation are not defined in this Regulation or in the Act but are defined in the *Land Titles Act*, those expressions have the same meanings in this Regulation as assigned to them in the *Land Titles Act*.

AR 168/2000 s1;108/2004;151/2006;181/2017

## **Part 1** **Registration of Condominium Plans and Other** **Condominium Documents**

### **Registration of plans**

#### **2 The Registrar**

- (a) must keep a register of condominium plans, and
- (b) is to record in the register particulars of all condominium plans registered pursuant to the Act.

### **Form of plan**

#### **3 A plan presented for registration as a condominium plan**

- (a) is to be prepared in a manner acceptable to the Registrar and on a medium or a material or in a digital format approved by the Registrar, and
- (b) is to consist of
  - (i) a first sheet on which are set out the matters prescribed by sections 8(1)(a), (b), (c), (d), (f), (g), (h), (j), (l), (1.1) and (m) and (2) and 10(1) of the Act, and
  - (ii) further sheets, if necessary, containing the particulars required by section 8(1)(e), (i) and (k) of the Act.

AR 168/2000 s3;108/2004;181/2017

### **Diagrams**

#### **4 The diagrams required by section 8(1)(b) and (e) of the Act**

- (a) where practical, are to be drawn with the north point directed to the top of the sheet, and
- (b) are to be to a scale that will clearly show all details and notations.

AR 168/2000 s4;108/2004

# FOR DISCUSSION ONLY

## Designation of units

**5(1)** Subject to subsections (2) and (3), units are to be numbered consecutively commencing with unit one and terminating with a unit numbered to correspond to the total number of units comprised in the plan presented for registration as a condominium plan.

(2) In the case of a building or land that is to be developed in phases, the units in the phases, subject to section 38, are to be numbered consecutively commencing with unit one in the first phase and terminating with the last unit in the last phase.

(3) In the case of 2 or more adjacent parcels that are amalgamating,

- (a) each condominium plan that is subject to the amalgamation is to be assigned a separate letter with one condominium plan being assigned the letter “A” and each of the other condominium plans being assigned respectively the next consecutive letters, and
- (b) each unit contained in each condominium plan that is subject to the amalgamation is to retain the number assigned to that unit under that condominium plan but with the letter referred to in clause (a) that is assigned to that condominium plan following the number of the unit.

## Unit factors

**6** There is to be assigned to each unit a unit factor so that the total of the unit factors for all the units in the parcel is equal to 10 000.

## Information to be contained in Schedule

**7** For the purposes of section 8(1)(g), (h) and (j) of the Act, the Schedule to the plan is to be in Form 1 and is to set out the following:

- (a) the unit number;
- (b) the unit factor;
- (c) the basis for determining the unit factor;
- (d) the approximate floor area for each unit, in the case of a building;
- (e) the approximate ground area for each unit, in the case of land divided into bare land units.

AR 168/2000 s7;108/2004

## Numbering of plan sheets

**8** Each sheet of a plan presented for registration as a condominium plan is to be endorsed in the upper right-hand corner with the words, “sheet of sheets”, with the appropriate numbers filled in.

## Endorsements re redivision or consolidation

**9** Before registering a condominium plan in respect of the redivision of a unit or units or the consolidation of units, the Registrar is to

- (a) endorse on the original registered condominium plan a notification of the redivision or consolidation, and

## FOR DISCUSSION ONLY

- (b) indicate on the drawings in the original registered condominium plan illustrating the unit or units being redivided or consolidated that the unit or units are being redivided or consolidated.

### **Additional sheets to condominium plan**

**10(1)** The Registrar may add additional sheets to a condominium plan on which may be made any endorsement, registration, memorandum, notification or other entry that is to be or may be made on the plan.

(2) Each sheet added to a plan by the Registrar pursuant to subsection (1) is to be numbered in a manner that is acceptable to the Registrar.

### **Certificates of title to units**

**11** A certificate of title to a unit is to be in Form 2 or in any other form that the Registrar specifies.

### **Change in by-laws**

**12(1)** A notice of a change in the by-laws of a corporation made pursuant to section 32 of the Act is to be in Form 3.

(2) On receipt of a notice referred to in subsection (1), the Registrar is to endorse on the condominium plan a notification containing any particulars that the Registrar directs.

AR 168/2000 s12;108/2004

### **Certificate given by corporation**

**13** A certificate given by a corporation pursuant to section 49(4) of the Act is to be in Form 4.

AR 168/2000 s13;108/2004

### **Instrument executed by corporation**

**14** On receipt of an instrument executed by a corporation pursuant to section 49, 51, 52 or 63 of the Act, the Registrar is to endorse on the condominium plan a memorandum

- (a) stating the nature of the instrument, and
- (b) containing any particulars that the Registrar directs.

AR 168/2000 s14;108/2004

### **Appointment of an administrator**

**15(1)** Where a person is appointed as

- (a) an administrator, receiver or receiver and manager under section 14(14) of the Act, or
- (b) an administrator under section 58 of the Act,

that person must file with the Registrar a certified copy of the order of the Court under which the appointment was made.

(2) A corporation must file with the Registrar a certified copy of an order of the Court made pursuant to section 59 of the Act.

## FOR DISCUSSION ONLY

(3) On receipt of a copy of an order referred to in subsection (1) or (2), the Registrar is to endorse on the condominium plan a notification containing any particulars that the Registrar directs.

AR 168/2000 s15;108/2004

### Notice of termination of plan

**16(1)** A notice of the termination of the condominium status of a building or parcel is to be in Form 5.

(2) On receipt of a notice referred to in subsection (1), the Registrar is to endorse on the condominium plan a notification

- (a) of the termination of the condominium status and the vesting of the parcel in the owners, and
- (b) containing any other particulars that the Registrar directs.

### Certificate given by corporation

**17** A certificate given by a corporation pursuant to section 52(5) or 63(4) of the Act is to be in Form 6.

AR 168/2000 s17;108/2004

### Transfer of parcel

**18** Where a parcel is transferred by a corporation pursuant to section 63 of the Act, the Registrar is to

- (a) enter on the relevant condominium plan a notification of the cancellation of the plan, and
- (b) indicate in an appropriate manner on any relevant plan that the condominium plan has been cancelled.

AR 168/2000 s18;108/2004

### Change of address

**19** The notice of change of an address required by section 73 of the Act is to be in Form 7.

AR 168/2000 s19;108/2004

### Directors of corporation

**20** The notices required to be filed under sections 10.1 and 28(5) of the Act are to be in Form 8.

AR 168/2000 s20;108/2004;181/2017

## Part 1.1 Duties of a Developer

### Additional information provided to purchaser

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

- (a) the name and address for service of the developer;

## FOR DISCUSSION ONLY

- (b) if the unit being sold is located on a parcel that is leased land, the term, rent and renewal rights of and the parties to the lease;
- (c) the name and address for service of the prescribed trustee, if any, who will hold deposits under section 14 of the Act;
- (d) if the unit being sold, other than a bare land unit, is in a development that is not substantially complete, the floor plan of the unit including the specifications of the materials to be used to finish the unit;
- (e) if the unit being sold is in a building or on land that is being developed in phases in accordance with section 19 of the Act, a copy of the phased development disclosure statement required under section 35;
- (f) 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 report for the corporation;
- (g) a list of any fees, rents or other charges that the corporation is required to pay to the developer or a third party for the use of any units, proposed units or other real or personal property;
- (h) where no condominium plan has yet 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 showing the developer as the owner of the land on which the condominium plan is to be registered, or
    - (B) the valid registration on title showing the developer has an interest in the land on which the condominium plan is to be registered,
  - or
  - (ii) if the developer has no registered interest in the land on which the condominium plan is to be registered, a statement to that effect;
- (i) where there are bare land units on the parcel, a description of any roads, utilities, services or delivery and distribution systems that are to be paid for by the corporation or are required to be repaired, maintained or replaced by the corporation, including, without limitation, water, sewage disposal, electricity and natural gas;
- (j) where there are bare land units on the parcel, a statement as to whether the developer will seek redivision of any units in accordance with section 20 of the Act;
- (k) the amount of any occupancy fees the developer will charge under section 20.02 prior to contributions being levied at regular intervals by the corporation under section 39 of the Act;
- (l) a description of any other fees the developer will charge the purchaser.

## FOR DISCUSSION ONLY

(2) For the purposes of section 12(1)(l) and (m) of the Act, the developer shall, in respect of a proposed unit contained in a plan of redivision or a unit in the second or subsequent phase of a phased development, provide a purchaser with estimates of the changes to the corporation's expenses that are expected to arise following the redivision or substantial completion of the phased development.

(3) For the purposes of section 12(1)(l) of the Act, if an annual budget has been prepared for the fiscal year by the corporation in accordance with section 30(4) of the Act, the developer shall deliver the annual budget to each purchaser.

(4) 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 each purchaser.

(5) The information or documents delivered under section 12(1) of the Act must be accompanied with a table of contents clearly identifying the documents being delivered.

(6) Delivery of information or documents referred to in this section or section 12(1) of the Act as part of or accompanied with the purchase agreement constitutes delivery of the information or documents for the purposes of section 12(1) of the Act.

(7) Nothing in this section or section 12 of the Act precludes the provision of information referred to in this section and section 12(1) of the Act by electronic means if both the purchaser and developer consent to the use of these means.

AR 181/2017 s5

### **Fees prior to levy of contributions**

**20.02(1)** A developer may charge a purchaser occupancy fees for the time period after the purchaser takes occupancy of the unit but not after the first monthly contribution becomes payable by the purchaser under section 39 of the Act.

(2) The amount of occupancy fees referred to in subsection (1) shall not exceed the amount disclosed to the purchaser under section 20.01(1)(k).

(3) This section does not apply in respect of payment of rent and security deposits as described in section 16 of the Act if the amount of the rent or security deposits was agreed to between the developer and the purchaser.

AR 181/2017 s5

### **Content, delivery of proposed budget**

**20.03(1)** A proposed budget referred to in section 20.01(4) 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, each of which must be listed under one of the following categories:
  - (i) maintenance and repairs;
  - (ii) insurance;
  - (iii) utilities;

## FOR DISCUSSION ONLY

- (iv) condominium management services;
  - (v) other contracted services;
  - (vi) the reserve fund study;
  - (vii) other expenses;
  - (d) the projected payments into the reserve fund or a fund described in section 23(7);
  - (e) the name and credentials, if any, of the person who prepared the proposed budget, and the date on which the proposed budget was prepared.
- (2) The person who prepares the proposed budget may include an estimate for inflation in respect of projected expenses.
- (3) A proposed budget must provide for a reasonable amount of the projected total revenue of the corporation to be deposited in the reserve fund or a fund described in section 23(7).
- (4) 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.

AR 181/2017 s5

### 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, the corporation shall provide the developer with

- (a) a notice setting out
  - (i) the actual and projected total expenses, and
  - (ii) the amount of the actual total expenses that is greater than 15% above the projected total expenses,
- and
- (b) a copy of the financial statements and any other documents from which the actual and projected total expenses were determined.

- (2) For the purposes of this section, the projected total expenses are the lowest projected expenses disclosed by the developer to any purchaser.
- (3) The corporation shall provide the notice under subsection (1) within 90 days after the preparation of the financial statements for the 12-month period beginning with the first month in which contributions are first levied on owners at regular intervals.
- (4) Subject to subsection (5), within 60 days after receiving a notice under subsection (1), the developer shall pay the corporation the amount specified in subsection (1)(a)(ii).



## FOR DISCUSSION ONLY

- (5) This section does not apply in respect of underestimated expenses that result from
- (a) an increase in an expense incurred by the corporation as a result of terminating an agreement under section 17 or 17.1 of the Act and entering into a new agreement for the same or similar services,
  - (b) an expense that was not reasonably foreseeable at the time the proposed budget was prepared,
  - (c) an increase in an insurance premium or insurance deductible paid in respect of any policies paid for by the corporation,
  - (d) an increase in utility charges from the market rates at the time of the proposed budget,
  - (e) charges for legal services provided to the corporation after the meeting convened under section 29 of the Act,
  - (f) an increase in the cost of a reserve fund study, or
  - (g) an increase in inflation, as compared to an estimate of inflation included under section 20.03(2).

AR 181/2017 s5

### Material change

**20.05(1)** For the purposes of section 13.1 of the Act, “material change” means a change or series of changes to a fact or proposal as stated in the information or a document provided under section 12 of the Act that, on a reasonable basis, would have an adverse effect on the value or use of the unit or proposed unit, the common property or the real property of the corporation.

(2) If a material change arises, 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, without limitation, order any relief that it considers appropriate in respect of the originating application, including

- (a) damages,
- (b) rescission of the purchase agreement, if the certificate of title has not yet been issued in the name of the purchaser, or
- (c) any other direction or order that the Court considers appropriate in the circumstances.

(5) The following do not constitute a material change for the purposes of section 13.1 of the Act:

## FOR DISCUSSION ONLY

- (a) a difference, as determined from the corporation's financial statements, between the projected expenses in the proposed budget and the actual expenses for the 12-month period beginning with the first month in which contributions are first levied at regular intervals;
- (b) a difference between the amount of the estimated contributions and the actual contributions;
- (c) a change in a final occupancy date under Part 1.2, provided the developer has complied with that Part.

AR 181/2017 s5

### Regulation prevails

**20.06** If there is a conflict or inconsistency between this Regulation and the purchase agreement, this Regulation prevails to the extent of the conflict or inconsistency.

AR 181/2017 s5

## Part 1.2 Occupancy Date

### Definitions

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

- (a) "final occupancy date" means either
  - (i) the single fixed date by which a developer will make a particular unit available for occupancy
    - (A) as set out in the occupancy date statement,
    - (B) as becomes binding on the purchaser under section 20.09(3),
    - (C) as provided in a written notice of revised final occupancy date under section 20.1(2)(b), or
    - (D) as agreed to by a purchaser and developer under 20.11(1),
  - or
  - (ii) the latest date in a range of dates within which the developer will make a particular unit available for occupancy
    - (A) as set out in the occupancy date statement, or
    - (B) as provided in a written notice of revised final occupancy date under section 20.1(2)(b);
- (b) "occupancy date statement" means a statement, referred to in section 12(1)(k) of the Act, that contains the information set out in section 20.08(1).

AR 181/2017 s5

### Occupancy date statement

**20.08(1)** A developer shall prepare an occupancy date statement in respect of a unit, containing either

## FOR DISCUSSION ONLY

- (a) a single fixed date on which the developer will make the unit available for occupancy by the purchaser, or
  - (b) a range of dates within which the developer will make the unit available for occupancy by the purchaser.
- (2) At the time the purchase agreement is executed, the developer shall ensure that the purchaser initials the occupancy date statement that was delivered in accordance with section 12(1)(k) of the Act.
- (3) Where a developer has provided an occupancy date statement as described in subsection (1)(b) and has subsequently selected a specific date on which the unit will be available for occupancy, the developer shall provide at least 30 days' written notice to the purchaser of the specific date.

AR 181/2017 s5

### Consequences of delay in occupancy

- 20.09(1)** If the developer does not make a unit available for occupancy within 30 days after the final occupancy date in the occupancy date statement, the purchaser may, subject to subsection (3), rescind the purchase agreement by providing the developer with a written notice rescinding the purchase agreement.
- (2) If a unit is not ready for occupancy within 30 days after the final occupancy date in the occupancy date statement, the developer shall provide the purchaser with a written notice of a revised final occupancy date unless the purchaser has already rescinded the purchase agreement.
- (3) A revised final occupancy date referred to in subsection (2) is binding on the purchaser
- (a) if the purchaser has provided written acceptance of the revised final occupancy date, or
  - (b) if the purchaser does not rescind the purchase agreement within 10 days after receipt of the notice of the developer's revised occupancy date.
- (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.

AR 181/2017 s5

### Delay for legitimate cause

**20.1(1)** Despite sections 20.08 and 20.09, a developer may delay occupancy beyond the final occupancy date for a unit, without liability for damages and without giving rise to a right of 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 final occupancy date:

- (a) fire;
- (b) explosion;
- (c) flood;
- (d) events leading to a declaration of an emergency under the *Emergency Management Act* or the *Emergencies Act* (Canada);

## FOR DISCUSSION ONLY

- (e) events leading to a declaration of a public emergency or disaster for the purpose of section 7 of the *Fiscal Planning and Transparency Act*;
  - (f) impact by aircraft, spacecraft, watercraft or land vehicles;
  - (g) riot, vandalism or malicious acts;
  - (h) a delay in the issuance of a development permit pursuant to the *Municipal Government Act* that is due to
    - (i) the failure of the development authority or other authority to issue the decision respecting the permit within the timelines required by law,
    - (ii) an outstanding appeal, or
    - (iii) an agreement to an extension of the time to make the decision respecting the permit;
  - (i) the issuance of an order under section 20(2), 37(2) or (3) or 49 of the *Historical Resources Act* or a notice preceding the making of a bylaw by the council of a municipality under section 26(2) of the *Historical Resources Act*.
- (2) If a developer delays occupancy beyond the final occupancy date under subsection (1), the developer shall
- (a) provide the purchaser with written notice of the delay and the cause of the delay, as soon as the developer becomes aware, and
  - (b) within a reasonable period of time following the beginning of the delay, provide the purchaser with written notice of a revised final occupancy date that reflects a reasonable length of time to remedy the results of the event that caused the delay in occupancy.

AR 181/2017 s5

### **Agreements, damage claims not precluded**

**20.11(1)** Nothing in this Part precludes a purchaser and developer from agreeing to a final occupancy date different from that set out in an occupancy date statement or written notice of revised final occupancy date.

(2) A remedy under this Part does not preclude a purchaser from pursuing a claim in damages for the damages caused by the delay in occupancy.

AR 181/2017 s5

## **Part 1.3 Documents Provided to Elected Board**

### **Documents provided to elected board**

**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 a board elected under section 29 of the Act:

- (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;

## FOR DISCUSSION ONLY

- (b) a copy of all outstanding orders made pursuant to the *Safety Codes Act*, *Municipal Government Act* or the *New Home Buyer Protection Act* in respect of the parcel or any buildings on the parcel;
- (c) a copy of the condominium plan and any plan of redivision;
- (d) copies of all manuals, schematic drawings, operating instructions, service guides, manufacturers' documentation, records of service and repairs and other similar information or documentation in the possession or control of the developer or interim board respecting the construction, installation, operation, maintenance, repair and servicing of any common property or real or personal property of the corporation;
- (e) a document setting out a list of the members of the interim board;
- (f) a document setting out
  - (i) the following information respecting each owner:
    - (A) the name of each owner and their corresponding unit numbers, as they appear on the condominium plan;
    - (B) areas of exclusive possession, as referred to in section 50 of the Act, assigned to each owner;
  - (ii) the following information respecting each unit:
    - (A) municipal address of the unit;
    - (B) the owner's address as it appears on the certificate of title;
    - (C) any additional address for service for the unit's owner as provided by the owner to the corporation;
    - (D) unit factors for each unit;
- (g) 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;
- (h) a document setting out a list of the names of each tenant that the developer or interim board has been informed of, 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;
- (i) a copy of any rules made by the board;
- (j) a copy of any unsatisfied judgment of a court or another decision-maker in proceedings to which the corporation is a party;
- (k) a copy of any legal or other professional advice or opinions paid for by the corporation;
- (l) copies of any proposed budget or annual budget of the corporation, any financial statements prepared for the corporation's current fiscal year and any financial statements in the possession or control of the developer or interim board respecting previous fiscal years;

## FOR DISCUSSION ONLY

- (m) copies of all records respecting the account maintained by the financial institution holding the reserve fund, operating funds or any other funds of the corporation;
- (n) copies of all tax records of the corporation;
- (o) 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;
- (p) a copy of any restrictive covenant registered against the parcel;
- (q) a copy of all current insurance policies obtained by or on behalf of the corporation, and the certificate respecting each insurance policy;
- (r) a copy of all caveats registered against units that are owned by the corporation or intended to be transferred to the corporation.

AR 181/2017 s6

### 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, the professional corporation with which the person is associated or the 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
  - (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*.

AR 181/2017 s6

# FOR DISCUSSION ONLY

## 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, within 10 days after depositing a purchaser's deposit into the prescribed trustee's trust account, notify the developer of the deposit.

AR 181/2017 s6

## 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.

(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) 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, and
- (b) where the certificate of title to the unit is issued in the name of the purchaser and the unit or the common property is not substantially complete, the prescribed trustee may release money held in trust to a developer only after a cost consultant provides a written opinion that the unit or the common property, as the case may be, is substantially complete.

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

- (a) the purchaser exercises a right of rescission under the Act or this Regulation,
- (b) a condition imposed by the purchaser or developer 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,

## FOR DISCUSSION ONLY

- (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 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.

AR 181/2017 s6

### Payment of trust money into Court

- 20.33(1)** A prescribed trustee may pay money held in trust into Court in accordance with this Part and the *Alberta Rules of Court* (AR 124/2010).
- (2) Money being paid into Court must be accompanied with an affidavit made by the prescribed trustee setting out
- (a) the circumstances under which the money is paid into Court,
  - (b) the name of every person interested in or entitled to all or part of the money, together with their addresses, if known, and
  - (c) the prescribed trustee's address for service of documents.
- (3) The prescribed trustee shall give notice of the payment into Court to the developer and the purchaser.
- (4) If a person who is not the developer or the purchaser asserts a claim to money held in trust, the prescribed trustee may pay money into Court after obtaining the Court's permission to do so.
- (5) If the prescribed trustee pays money into Court under subsection (4), the prescribed trustee shall give further notice of the payment into Court as directed by the Court.

AR 181/2017 s6

### Trust account records



# FOR DISCUSSION ONLY

**20.34(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.

**(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.

AR 181/2017 s6

## **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;
- (d) mutual use agreements among corporations;
- (e) agreements for the provision of electricity or natural gas for a term of less than 5 years;
- (f) agreements respecting an alternative or renewable energy system;

# FOR DISCUSSION ONLY

- (g) agreements for the provision of telecommunication services or facilities.  
AR 181/2017 s6

## Part 1.6 Documents Provided by Corporation

### Information accompanying annual general meeting notice

**20.5** A corporation shall provide an owner or mortgagee who has given notice under section 26(3) of the Act with the following documents accompanied with the notice of an annual general meeting under section 30(4) of the Act:

Require condominium corporations to disclose certain documents free of charge at certain points of the year depending on the type of document, to increase transparency.

- (a) minutes from all board meetings that have been held since the last annual general meeting;
- (b) a forecast of the reserve fund for the next fiscal year, including the following information:
  - (i) the amount of the reserve fund projected for the beginning and end of the fiscal year;
  - (ii) all projected payments into and out of the reserve fund for the fiscal year;
  - (iii) a list of the depreciating property projected to be repaired or replaced during the fiscal year and the projected costs of the repairs and replacements.

### Information provided after annual general meeting

**20.51** Within 30 days after an annual general meeting, a corporation shall provide an owner or mortgagee who has given written notice under section 26(3) of the Act with

- (a) the minutes of the annual general meeting,
- (b) records of the votes held at the annual general meeting, and
- (c) a list of the names and addresses for service of the members of the board.

### Annual budget disclosure

**20.52** In addition to disclosure requirements under section 30(4)(a) of the Act, a corporation shall provide a copy of the annual budget to owners

Ensures owners have the annual budget at the start of the fiscal year, regardless of when the AGM takes place, for more information about how their condominium fees are calculated.

- (a) on or before the start of the fiscal year to which the annual budget applies, for a budget prepared at the start of the fiscal year, or
- (b) as soon as possible after the start of the fiscal year that the budget is approved, for a budget prepared after the start of the fiscal year.

### Information disclosed for purposes of s44 of Act

**20.53** (1) The following information and documents, for which the retention period set out in Schedule 3 has not expired, are prescribed for the purposes of section 44 of the Act:

## FOR DISCUSSION ONLY

Consolidates existing document request sections from the CPA and the Regulation, and adds new document disclosures based on new legislated requirements.

- (a) a statement setting out the amount of any contributions due and payable in respect of the unit;
- (b) the particulars of
  - (i) any action commenced against the corporation and served on the corporation,
  - (ii) any unsatisfied judgment or order for which the corporation is liable, and
  - (iii) any written demand made on the corporation for an amount in excess of \$5000 that, if not met, may result in an action being brought against the corporation;
- (c) the particulars of or a copy of any subsisting management agreement;
- (d) the particulars of or a copy of any subsisting recreational agreement;
- (e) the particulars respecting any post tensioned cables that are located anywhere on or within the property that is included in the condominium plan;
- (f) a copy of the budget of the corporation;
- (g) a copy of the annual financial statements;
- (h) a copy of the bylaws of the corporation;
- (i) a copy of any minutes of proceedings of a general meeting of the corporation or of the board;
- (j) a statement setting out the amount of the capital replacement reserve fund;
- (k) a statement setting out the amount of the monthly contributions and the basis on which that amount was determined;
- (l) a statement setting out the unit factors and the criteria used to determine unit factor allocation;
- (m) a statement setting out any structural deficiencies that the corporation has knowledge of at the time of the request in any of the buildings that are included in the condominium plan;
- (n) a copy of any lease agreement or exclusive use agreement with respect to the possession of a portion of the common property, including a parking stall or storage unit.
- (o) rules established by the corporation;
- (p) a list of the names and addresses for service of the members of the board;
- (q) the text of ordinary and special resolutions voted on by the corporation and the results of the voting on those resolutions;
- (r) approved draft minutes of an annual general meeting that was held at least 31 days before the request;

# FOR DISCUSSION ONLY

- (s) loan disclosure for current loans, including documents showing the starting balance, current balance, interest rate, monthly payment, purpose of the loan, amortization period, and default information, if applicable;
- (t) reports prepared for the corporation by professionals, including professional engineers but excluding lawyers;
- (u) insurance certificates and policies of insurance of the corporation;
- (v) reserve fund plans, reserve fund reports and annual reports.

Clarifies that owners may make copies of documents provided by the corporation, such as documents received from a request, and can give copies to others.

The fee for documents is set to \$10 for most documents, \$30 for rush documents, and \$200 for estoppel certificates. Rush fees can only be charged for specific documents.

Clarifies owners cannot be billed for receiving documents that are required to be provided without request, such as financial statements provided for the AGM.

Sets the amount of time that corporations must keep specific documents.

(2) An owner is not precluded from making copies of any documents provided under section 44 of the Act and providing copies of these documents to mortgagees, potential purchasers of a unit and owners of other units in the condominium.

(3) A corporation may charge fees not exceeding the following amounts for the provision, in the ordinary course, of the following classes of document:

- (a) document other than estoppel certificate, the fee prescribed in section 14(1)(b) of the *Tariff of Fees Regulation* (AR 120/2000);
- (b) estoppel certificate, 20 times the fee referred to in clause (a).

(4) If, under subsection (3)(a), a corporation provides a document described in subsection (1)(a), (b), (j), (k), (m), or (t) and the document is required within 72 hours of the request, a corporation may charge a fee of up to 3 times the fee set out in subsection (3)(a).

## Documents provided for no charge

**20.54** Where a bylaw or a provision of the Act or this Regulation requires a corporation to make available or provide, without request, information or documents, the corporation shall not charge for making available or providing the information or documents in accordance with the bylaw or provision to an owner, unit occupant or mortgagee who has given notice under section 26(3) of the Act, as applicable.

## Retention periods for documents

**20.55** A corporation shall retain the documents set out in the first column of Schedule 3 for at a minimum, the corresponding time period set out in the second column of Schedule 3.

## Part 2 Capital Replacement Reserve Fund

### Definitions

**21(1)** In this Part,

- (a) “common property” includes common property referred to in section 14(1)(a) of the Act;
- (b) “depreciating property” means the property to which section 38(1) of the Act applies;

## FOR DISCUSSION ONLY

New definitions added below.

- ~~(c) “qualified person” means, in respect of the depreciating property, an individual who, based on reasonable and objective criteria, is knowledgeable with respect to~~
  - ~~(i) the depreciating property or that type of depreciating property,~~
  - ~~(ii) the operation and maintenance of the depreciating property or that type of depreciating property, and~~
  - ~~(iii) the costs of replacement of or repairs to, as the case may be, the depreciating property or that type of depreciating property;~~
- (d) “reserve fund” means, in respect of a corporation, the capital replacement reserve fund required to be established and maintained by the corporation under section 38 of the Act;
- (e) “reserve fund plan” means a plan prepared and approved in accordance with section 23(4) or 30(c);
- (f) “reserve fund report” means a report prepared in accordance with section 23(3) or 30(b);
- (g) “reserve fund study” means a study carried out in accordance with section 23(1) and (2) or 30(a).

Sets out specific qualifications a person has to have in order to provide a reserve fund study, and ensures the person does not have a conflict of interest.

**(1.1)** In this Part, subject to subsection (1.2), “qualified person” means, in respect of the depreciating property, an individual who

- (a) is a
  - (i) professional engineer,
  - (ii) professional technologist,
  - (iii) registered architect,
  - (iv) licensed real estate appraiser, who holds the appropriate authorization for that purpose, issued by the Real Estate Council of Alberta, or
  - (v) certified reserve fund planner who is accredited by the Real Estate Institute of Canada

and

- (b) is knowledgeable with respect to
  - (i) the depreciating property or that type of depreciating property,
  - (ii) the operation and maintenance of the depreciating property or that type of depreciating property, and
  - (iii) the costs of replacement of or repairs to, as the case may be, the depreciating property or that type of depreciating property.

**(1.2)** In this Part, “qualified person”, in respect of the depreciating property, does not include any of the following persons:

- (a) a director, officer or employee of the corporation;

## FOR DISCUSSION ONLY

- (b) a manager under a property management agreement with the condominium corporation;
- (c) a partner, employer or employee of a person referred to in clause (a) or (b);
- (d) the spouse or common-law partner or a child of a director or officer of the corporation, or a child of the spouse or common-law partner of a director or officer of the corporation;
- (e) an owner of a unit in the condominium;
- (f) an occupant of a unit in the condominium.

(2) For the purposes of section 23, a reference to a qualified person includes a corporate entity if the corporate entity, in carrying out the functions of a qualified person, employs or otherwise retains the services of an individual who is a qualified person to carry out those functions.

AR 168/2000 s21;108/2004

Requires a developer or interim board who is arranging a reserve fund study to use an independent reserve fund study provider.

### Developer, interim board reserve fund plan

**21.1** A developer or interim board that arranges for a reserve fund study before a board is elected under section 29 of the Act shall ensure that the reserve fund study is conducted by a qualified person who is at arm's length from the developer or every member of the interim board, as the case may be.

### Corporation as qualified person

**22** Notwithstanding section 21(2), if a condominium plan consists of not more than 12 units, the corporation may, in respect of that condominium plan, carry out the functions of a qualified person if authorized to do so by a special resolution.

### Reserve fund study, report and plan

**23(1)** The corporation must retain a qualified person to carry out a study of the depreciating property for the purposes of determining the following:

- (a) an inventory of all of the depreciating property that, under the circumstances under which that property will be or is normally used, may need to be repaired or replaced within the next ~~25 years~~ 30 years or a time period longer than 30 years;

Clarifies the methods that a reserve fund study provider must use when they conduct a reserve fund study, and expands the time period covered by the study to at least 30 years.

- (a.1) conduct an on-site visual inspection of all visible components of the depreciating property;
- (a.2) interview the members of the board;
- (a.3) interview the manager, if the corporation employs a manager;
- (a.4) review relevant documents including the condominium plan, construction documents and maintenance records;

## FOR DISCUSSION ONLY

- (b) the present condition or state of repair of the depreciating property and an estimate as to when each component of the depreciating property will need to be repaired or replaced;
- (c) the estimated costs of repairs to or replacement of the depreciating property using as a basis for that estimate costs that are not less than the costs existing at the time that the reserve fund report is prepared;
- (d) the life expectancy of each component of the depreciating property once that property has been repaired or replaced.

(2) In carrying out the reserve fund study under subsection (1), the qualified person must also do the following:

- (a) determine the current amount of funds, if any, included in the corporation's reserve fund;
- (b) recommend the amount of funds, if any, that should be included in or added to the corporation's reserve fund in order to provide the necessary funds to establish and maintain or to maintain, as the case may be, a reserve fund for the purposes of section 38 of the Act;
- (c) describe the basis for determining
  - (i) the amount of the funds under clause (a), and
  - (ii) the amount in respect of which the recommendation was made under clause (b).

(3) On completing the reserve fund study under this section, the person who carried out the study must prepare and submit to the board a reserve fund report in writing in respect of the study setting out the following:

- (a) the qualifications of that person to carry out the reserve fund study and prepare the report;
- (b) whether or not the person is an employee or agent of or otherwise associated with the corporation or any person who performs management or maintenance services for the corporation;
- (c) the findings of the reserve fund study in respect of the matters referred to in subsections (1) and (2);
- (d) any other matters that the person considers relevant.

(4) On receiving the reserve fund report under subsection (3), the board must, after reviewing the reserve fund report, approve a reserve fund plan

- (a) under which a reserve fund is to be established, if one has not already been established, and
- (b) setting forth the method of and amounts needed for funding and maintaining the reserve fund.

(5) A reserve fund plan approved under subsection (4) must provide that, based on the reserve fund report, sufficient funds will be available by means of owners' contributions, or any other method that is reasonable in the circumstances, to repair

## FOR DISCUSSION ONLY

or replace, as the case may be, the depreciating property in accordance with the reserve fund report.

(6) Notwithstanding that a reserve fund plan has been approved under subsection (4), the corporation must provide to the owners for the owners' information copies of that approved reserve fund plan prior to the collection of any funds for the purposes of those matters dealt with in the reserve fund report on which the approved reserve fund plan was based and that are to be carried out pursuant that report.

(7) Until such time that a corporation has approved a reserve fund plan under subsection (4) and has met the requirement under subsection (6) so as to be eligible to collect funds in respect of the reserve fund, the corporation may, notwithstanding subsection (6), collect or otherwise receive funds for a fund that is similar in nature to a reserve fund and may make expenditures from and generally continue to operate that fund.

AR 168/2000 s23;108/2004;181/2017

### **When reserve fund study, report and plan must be prepared**

**24** The corporation must meet the requirements of section 23(1) to (6) no later than 2 years after the date on which the condominium plan is registered.

AR 168/2000 s24;181/2017

### **Exemption from reserve fund study, report and plan re rental units**

**25** The corporation is exempted from retaining a qualified person to preparing a reserve fund study and from establishing or maintaining a reserve fund if

- (a) the certificate of title to each of the units included in a condominium plan is registered in the name of the same owner or the same group of owners, and
- (b) those units are rented or offered for rent to persons as tenants who are not purchasers and are not intended to be purchasers.

AR 168/2000 s25;181/2017

### **When study, report and plan must be prepared re conversions, etc.**

**26(1)** Notwithstanding sections 24 and 25, if the owner

- (a) of premises to which section 21 of the Act applies offers those premises for sale, or
- (b) of units to which section 25 applies offers those units for sale and if as a result of the sale of any of those units section 25 would no longer apply in respect of those units,

the owner shall not sell any of those premises or units until

- (c) a reserve fund study is carried out and a reserve fund report is prepared in accordance with section 23, and
- (d) a reserve fund plan is prepared in accordance with section 23.



## FOR DISCUSSION ONLY

(2) The reserve fund report and the reserve fund plan referred to in subsection (1) must be made available for inspection by any person purchasing a unit referred to in subsection (1).

AR 168/2000 s26;108/2004

### Maintenance of reserve fund

**27(1)** A corporation must maintain the funding of its reserve fund at an appropriate amount or in an appropriate state so that the requirements of section 38 of the Act continue to be met.

(2) Except for the purposes of paying for repairs to or replacement of depreciating property, neither a corporation nor any person holding money or dealing with money on behalf of the corporation is to commingle any funds that make up the corporation's reserve fund with the corporation's operating funds or any funds of any other corporation or other entity.

(3) Neither a corporation nor any person holding money or dealing with money on behalf of the corporation is to commingle any funds that make up the corporation's reserve fund with the funds that make up any other corporation's reserve fund.

AR 168/2000 s27;108/2004

### Repairs, etc. not to be construed as capital improvements

**28** For the purposes of this Part and section 38 of the Act, a repair to or replacement of depreciating property that is carried out by a corporation is not to be construed as a capital improvement if that repair or improvement is a matter that was included in the current reserve fund report that was prepared and submitted to the corporation.

AR 168/2000 s28;108/2004

### Annual report

**29(1)** The corporation must prepare an annual report for each fiscal year respecting the reserve fund setting out at least the following:

- (a) the amount of the reserve fund as of the last day of the immediately preceding fiscal year;
- (b) all the payments made into and out of the reserve fund for that year and the sources and uses of those payments;
- (c) a list of the depreciating property that was repaired or replaced during that year and the costs incurred in respect of the repair or replacement of that property.

(2) The annual report prepared under subsection (1) must be made available by the corporation to the owners for the owners' information before or at the time that the notice of the next annual general meeting of the corporation is provided to the owners.

AR 168/2000 s29;181/2017

Allows corporations to prepare reserve fund studies and plans more often than every 5 years if they choose.

### 5-year review

**30** ~~At the conclusion of~~ On or before 5 years from the day that the most recent reserve fund plan was approved, the corporation must, in accordance with the same procedures, requirements and restrictions to which section 23 is subject,

## FOR DISCUSSION ONLY

- (a) carry out a reserve fund study,
- (b) prepare a reserve fund report,
- (c) approve the reserve fund plan, and
- (d) provide to the owners for the owners' information copies of the approved reserve fund plan referred to in clause (c) prior to the collection of any funds for the purposes of those matters dealt with in the reserve fund report referred to in clause (b) and that are to be carried out pursuant that report.

### Access to reserve fund plan and annual reports

#### 31(1) Notwithstanding that

- (a) the most recent reserve fund report,
- (b) the most recent reserve fund plan, or
- (c) the most recent annual report prepared under section 29

has been provided to the owners under this Regulation, the corporation, on the written request of an owner, must, within 10 days from the day of receipt of the written request, provide to that owner a copy of that reserve fund report, reserve fund plan or annual report, or any one or more of them, as requested by the owner.

(2) On the written request of a purchaser or a mortgagee of a unit, the corporation must, within 10 days from the day of receipt of the written request, provide to the person making the request a copy of

- (a) the most recent reserve fund report,
- (b) the most recent reserve fund plan, and
- (c) the most recent annual report prepared under section 29.

## Part 2.1 Investments

### Authorized investments

**31.1** The investments in which a corporation may invest funds not immediately required by it in accordance with section 43 of the Act are those authorized in Schedule 2 to this Regulation.

AR 151/2006 s3;181/2017

## Part 2.2 Meetings, Voting

### Proxy form and contents, presentation

**31.2(1)** A proxy must be in written form and must contain at least the following elements:

- (a) the name and unit number of the person granting the proxy;
- (b) the name of the proxy holder;

Requires proxies to be granted in writing and to include specific information to ensure standardized proxy forms.

## FOR DISCUSSION ONLY

- (c) the length of time for which the proxy is valid and the date it is granted;
- (d) the signature of the person granting the proxy;
- (e) instructions provided or limitations or restrictions, if any, imposed by the person granting the proxy.

(2) A corporation shall adopt procedures respecting the use of proxies, including, without limitation, procedures respecting the signification, presentation and verification of proxies before a vote.

### Restrictions respecting proxies

**31.21(1)** A person may grant a proxy to any individual except an individual referred to in subsection (2)(a) or (b).

(2) The following restrictions apply respecting proxies:

- (a) a minor may not hold a proxy;
- (b) a manager or employee of the corporation or a management company may not hold a proxy, unless the manager or employee holds it only for the purposes of establishing quorum for a meeting;
- (c) a proxy is valid for a time period of no more than 6 months or a shorter time period as set out in the proxy;
- (d) a person granting a proxy may revoke the proxy in writing;
- (e) any reasonable restriction set out in a bylaw applies.

### Voting by co-owners

**31.22(1)** If a unit is owned by 2 or more persons, the unit's vote and unit factor votes are divided among the unit's co-owners

- (a) in proportion to each co-owner's respective ownership share of the unit, if the co-owners are not joint tenants, or
- (b) on the basis of equality of ownership shares in the unit for all co-owners if the co-owners are joint tenants.

(2) Despite subsection (1), if only one co-owner of a unit attends a meeting, that co-owner's vote represents the entire unit and all associated unit factors, less the proportion of a unit's vote and unit factor votes for which another co-owner granted a proxy to a third party.

### Voting re corporation-owned unit

**31.23** For the purposes of voting, a unit owned by a corporation is allocated zero unit factors and is not considered a unit for which the owner has a right to vote.

### Electronic voting

**31.24** A corporation may use electronic voting if the corporation's bylaws provide specific direction respecting

- (a) the acceptable means of electronic voting,
- (b) the types of votes that may be conducted electronically, and

Set restrictions on who can hold a proxy, and clarify that proxies cannot be granted for more than 6 months at a time.

Set out procedure for counting votes when a unit is owned by more than one person, dividing the vote by ownership share.

Clarify that units owned by the corporation in common, such as a guest suite, are not counted during votes.

Allow corporations to use electronic voting as long as the corporation's bylaws set procedures for electronic votes.

# FOR DISCUSSION ONLY

- (c) the security requirements for electronic voting, including any encryption and authentication requirements.

Detail how to disclose results of written votes. Rules for written votes are set out in section 26.6 of the amended *Condominium Property Act*.

## Disclosure of voting results

**31.25(1)** Within 30 days after the date on which votes must be received by the board on a particular vote conducted in writing, a corporation shall, subject to section 31.27, provide the results of the vote to each owner and each mortgagee who has given written notice under section 26(3) of the Act.

- (2) The voting results must be provided in a manner that does not identify a unit or a person who cast a vote.

Require the corporation to send a preliminary 'save-the-date' notice at least 60 days before the AGM, and allow owners to propose agenda items for the AGM after receiving this notice.

## Annual general meeting notice, agenda

**31.26(1)** Subject to section 31.27, a corporation shall send a preliminary notice in writing of the annual general meeting at least 60 days before the date of the annual general meeting.

- (2) A preliminary notice of an annual general meeting must contain the following information:

- (a) the date of the annual general meeting;
- (b) a call for agenda items and a deadline for submission of proposed agenda items which must be at least 30 days before the annual general meeting;
- (c) a statement that a proposed agenda item submission must include an explanation of the nature of the proposed agenda item and any information necessary to effectively consider the proposed agenda item;
- (d) a statement that the owners present at the annual general meeting will decide the contents of the agenda by a majority vote at the beginning of the annual general meeting.

- (3) Proposed agenda items may be submitted

- (a) by sending them to an address registered to the corporation,
- (b) by a method set out in the bylaws, or
- (c) by a method specified by a board resolution.

## Exemption re single owner of units

**31.27** A corporation is exempt from the requirements under sections 31.25 and 31.26 if the certificate of title to each of the units included in the condominium plan is registered in the name of the same owner or the same group of owners.

The final AGM notice must include a summary of all agenda items proposed by owners.

## Proposed agenda items in meeting notice

**31.28** A written notice of an annual general meeting sent under section 30(3) of the Act must include a summary of the proposed agenda items submitted under section 31.26(3).

Allows condominium owners to change or overturn an existing rule by passing an ordinary resolution.

## Amendment, repeal of rules

**31.29(1)** For greater certainty, a rule established by the board may be amended or repealed by an ordinary resolution.

- (2) If there is a conflict or inconsistency between an ordinary or special resolution and a rule established by the board, the resolution prevails to the extent of the

# FOR DISCUSSION ONLY

conflict or inconsistency.

## Part 2.3 Borrowing by Corporation

If corporations want to borrow money, and they will borrow more than 15 per cent of their revenue, the loan must be approved by the owners.

### Resolution for borrowing

**31.3(1)** Subject to subsection (2), a corporation must authorize, by an ordinary resolution, all borrowing of money where the aggregate amount of the loans for the fiscal year exceeds 15 per cent of the corporation's revenues in the most recent financial statements prepared under section 30(4)(a) of the Act, unless the corporation's bylaws require a special resolution for that purpose.

**(2)** Subsection (1) does not apply to a corporation for a condominium if the certificate of title to each of the units included in the condominium plan is registered in the name of the same owner or the same group of owners.

## Part 3 Phased Development

### Application of Part

**32** This Part applies with respect to a building or land that is to be developed in phases under section 19 of the Act.

AR 168/2000 s32;108/2004

### Developments not included under this Part

**33(1)** In this section, "common property" means common property as defined in section 14(1)(a) of the Act.

**(2)** Nothing in this Part is to be construed so as to apply with respect to the development of a building or land in respect of a condominium plan under which

- (a) bare land units or other units are redivided or modified pursuant to section 20 of the Act or Part 5, or
- (b) an amalgamation of adjacent parcels is carried out pursuant to Part 4,

whether or not in the process common property is created.

AR 168/2000 s33;108/2004

### Existing building and land

**34** A building or land is not eligible to be developed in phases under this Part if the building or land is included in a condominium plan that does not meet the requirements of section 35.

### Phased development disclosure statement

**35(1)** Where a plan is registered as a condominium plan under which a building or land is to be developed in phases under this Part, the plan, at the time when it is registered with respect to the initial phase, must be accompanied by a phased development disclosure statement that is registered as part of the condominium plan and that sets out at least the following:

- (a) a statement that the building or land is to be developed in phases;

## FOR DISCUSSION ONLY

- (b) the maximum number of units to be included in the entire completed phased project;
  - (c) the minimum number of units to be included in the entire completed phased project;
  - (d) a description of the units and common property included in the initial phase;
  - (e) a description of the units and common property to be included in each of the subsequent phases, including
    - (i) the number of units or the minimum and maximum number of units that are to be included in each of those phases;
    - (ii) the general size of each of the units that are to be included in each of those phases;
    - (iii) the extent of the common property and a description of the improvements to that common property that are to be included in each of those phases;
    - (iv) any restrictions or qualifications on the types of units and common property that are to be included in each of those phases;
    - (v) a general description of the proposed usage of the units and the common property that are to be included in each of those phases;
  - (f) a description of the proposed physical appearance of each phase and the architectural compatibility of the phases with each other and the project as a whole;
  - (g) if common property in a subsequent phase is to be available for the use of the owners in the previous phases, an explanation as to when those facilities will be completed and available to those owners;
  - (h) the extent to which the developer will contribute to the common expenses respecting the building and land during the development and sale of each phase and on the completion and sale of the entire phased project;
  - (i) the method used to determine the allocation or distribution of administrative expenses with respect to all of the units in each separate phase and for all of the units in the entire completed project;
  - (j) the basis for allocating unit factors in the phased development, which must be consistent for each phase and the entire phased project;
  - (k) the effect on the owners' contributions for administrative expenses and the corporation's budget if one or more, as the case may be, of the future phases are not proceeded with;
  - (l) a certificate of the developer in Form 9 certifying that the phased development disclosure statement complies with the Act and the regulations and all the requirements under the Act and the regulations.
- (2) Once a phased development disclosure statement is registered, that phased development disclosure statement is not to be changed by the developer without the

## FOR DISCUSSION ONLY

consent of at least 2/3 of the persons, not including the developer, who are entitled under the Act to vote.

(3) Where a building or land is being developed in phases, the development must be in accordance with the phased development disclosure statement.

(4) Notwithstanding subsection (2) or (3), to the extent that the development of a building or land in phases, as provided for under a registered phased development disclosure statement, does not comply with the current development scheme, development control by-law, zoning by-law, land use by-law or any other municipal requirement applicable to that development, the developer may

- (a) change the development to the extent necessary so that the development complies with the current scheme, by-law or other municipal requirement, and
- (b) change the phased development disclosure statement to reflect the change referred to in clause (a).

(5) Where a phased development disclosure statement is to be changed under subsection (2) or (4),

- (a) the change does not become effective until the change is registered, and
- (b) the Registrar, on being presented with a certificate of the developer in Form 10, is to amend the phased development disclosure statement to reflect the change.

### Completion of project

**36(1)** Where a condominium plan indicates that a building or land may be developed in phases, all the phases that make up the total development of the building or land in phases must be registered

- (a) within the period of time specified in the phased development disclosure statement, or
- (b) if the phased development disclosure statement does not specify the period of time within which all the phases that make up the total development are to be registered, within 6 years from the day that the condominium plan was registered.

(2) Notwithstanding subsection (1), the developer may, with the agreement of at least 2/3 of the persons, not including the developer, who are entitled under the Act to vote, extend or reduce the period of time referred to in subsection (1).

(3) If

- (a) a building or land is to be developed in phases,
- (b) one or more phases have been registered, and
- (c) the developer does not proceed, or does not intend to proceed, with one or more of the other phases that were to be part of the development,

the developer must in writing notify the corporation and the owners that the phase or phases will not be proceeding.

## FOR DISCUSSION ONLY

(4) If

- (a) a building or land is to be developed in phases, and
- (b) within the time period referred to in subsection (1) or (2), all the phases that make up the total development are not registered,

the developer, unless the corporation otherwise agrees, is deemed to have given written notice to the corporation and the owners that the phase or phases will not be proceeding.

(5) If

- (a) under a condominium plan a building or land is to be developed in phases and
  - (i) in accordance with the phased development disclosure statement, or
  - (ii) under an agreement between the developer and the corporationthe developer is to transfer facilities and property intended for common use to the corporation after the registration of one or more phases, and
- (b) within the time provided for in the phased development disclosure statement or the agreement or, if the time is not so provided for, within a reasonable time the developer fails to meet the requirement to transfer the facilities and property intended for common use to the corporation,

an owner, the corporation or an interested party may bring an action for an order of the Court directing the developer to carry out that requirement or for damages arising out of the developer's failure to carry out that requirement.

(6) If

- (a) after the registration of one or more phases in respect of a building or land that is being developed in phases the developer elects not to or fails to proceed with one or more other phases that were to have been included in the development, and
- (b) common property that was to have been made available for the use of the owners in the registered phases was to have been included in the phases that are not being proceeded with,

either the developer, the corporation or an interested party may apply to the Court for an order giving directions

- (c) as to how the common property may be made available under the existing circumstances, and
- (d) with respect to the provision of that common property, as to the application of any funds arising from a bond, a letter of credit or other security that has been provided to secure the provision of that common property.

(7) If

- (a) after the registration of one or more phases in respect of a building or land that is being developed in phases the developer elects not to or fails to



## FOR DISCUSSION ONLY

proceed with one or more other phases that were to have been included in the development, and

- (b) land, on which the phases not being proceeded with were to have been located, remains part of the condominium plan,

the developer, the corporation or an interested party may apply to the Court for an order removing the unused land from under the condominium plan.

(8) In considering an application under subsection (7), the Court may

- (a) refuse to grant the order with respect to the land or a portion of that land that is the subject of the application where the Court is satisfied that the land or that portion of the land is required for the purposes of properly finishing or otherwise completing the building or land that is included in the phases that are registered;
- (b) where the Court is satisfied that the land or any portion of that land that is the subject of the application is not required for the purposes of properly finishing or otherwise completing the building or land that is included in the phases that are registered, give directions directing that that land or that portion of the land be removed from under the condominium plan;
- (c) where the Court is satisfied that the land or any portion of that land that is the subject of the application is required for the purposes of properly finishing or otherwise completing the building or land that is included in the phases that are registered, give directions respecting the vesting of the title of that land or a portion of that land in the name of the corporation or the owners of the units;
- (d) give any directions that the Court considers appropriate respecting the transfer of any land that is the subject of the application, the vesting of ownership in that land, the issuance, cancellation or modification of any certificate of title to that land, the reallocation of unit factors and any other matter relating to the transaction.

### **Court order terminating development**

**37** Notwithstanding anything in section 36, where a building or land is to be developed in phases and

- (a) the developer, before all the phases that make up the total development are registered or are otherwise completed, is assigned into bankruptcy, is adjudged bankrupt or has a receiver of its assets appointed, or
- (b) the developer is unable or unwilling to register or otherwise complete the project as required under this Part or in accordance with the phased development disclosure statement,

the developer, the corporation or an interested party may apply to the Court for an order terminating the development and giving directions or a determination in respect of any matter arising out of the termination of the development.

### **Registration of condominium plan**

**38(1)** Where a plan is to be registered as a condominium plan under which a building or land is to be developed in phases, the Registrar, on registering the plan, must, in accordance with sections 5 and 6 of the Act,

## FOR DISCUSSION ONLY

- (a) in the case of the initial phase or phases that are included in the initial registration of the plan, issue, in respect of the building or land included in that phase or those phases, certificates of title for the units, and
  - (b) in the case of the remainder of the parcel that is not included in the registered phase or phases referred to in clause (a), issue, in respect of the parcel that is not included in the registered phase or phases, one or more certificates of title for bare land units.
- (2) A plan presented for registration as a condominium plan must, with respect to the building or land that is included in the registered phase or phases for which certificates of title are to be issued under sections 5 and 6 of the Act, meet the requirements of sections 8 to 10 of the Act.

AR 168/2000 s38;108/2004

### **Amendment to plan re subsequent phase**

**39(1)** With respect to the registration of a subsequent phase, on presentation to the Registrar of the appropriate documentation to amend the condominium plan to include a subsequent phase, the Registrar is to amend the condominium plan so that the units, the common property and any reallocation of unit factors that are the subject of the amendment are consolidated with the existing registered phases.

(2) An amendment to a condominium plan presented for registration under this section must, with respect to the building or land that is the subject of that amendment, meet the requirements of sections 8 to 10 of the Act.

(3) On registering an amendment to a condominium plan under this section, the Registrar is to

- (a) cancel the certificates of title to the bare land units that were issued under section 38(1)(b) for the real property that is now to be included in the building or land that is the subject of that amendment, and
- (b) issue new certificates of title in accordance with sections 5 and 6 of the Act with respect to the units that are included in the building or land that is the subject of that amendment.

AR 168/2000 s39;108/2004

### **Restrictions on registration**

**40** Where an amendment is to be registered amending a condominium plan to consolidate into the plan a subsequent phase, the Registrar is not to register any documentation under which certificates of title are to be issued in respect of that subsequent phase until the Registrar is provided with a certificate of the developer in Form 11 certifying that the amendment meets the criteria as set out in the phased development disclosure statement.

### **Common property re amendment to plan**

**41** On the registration of an amendment to a condominium plan under section 39, the common property included in that amendment becomes common property for all of the phases that have been registered and the common property in the previously registered phases becomes common property for the phase for which the amendment was registered.

# FOR DISCUSSION ONLY

## Operation of phases under the Act

**42** The development in phases of a building or land under a condominium plan must be carried out in a manner that,

- (a) on the registration of the first phase, enables that phase to function and operate under the Act in the same manner as if all the units and common property included in that phase were the only units and common property that were going to be included in that condominium plan, and
- (b) on the registration of each subsequent phase, enables the most recently registered subsequent phase and the previously registered phases to function and operate under the Act in the same manner as if all the units and common property included in the registered phases were the only units and common property that were going to be included in that condominium plan.

## Sale of units

**43** Where a building or land is to be developed in phases, a developer, in addition to providing to a purchaser the information required under section 12 of the Act, must also provide to the purchaser a copy of the phased development disclosure statement referred to in section 35.

AR 168/2000 s43;108/2004;181/2017

## Convening of meeting and election of board

**44** With respect to convening a meeting of the corporation for the purpose of electing a board, on the registration of a condominium plan under which a building or land is developed in phases, section 29 of the Act applies to the first phase in the same manner as if that phase contained the only units and common property that are to be included in the condominium plan.

AR 168/2000 s44;108/2004

## Easements

**45(1)** Where an easement is registered against a condominium plan under which a building or land is being developed in phases, that easement is deemed to be also registered against the certificate of title for

- (a) each unit then existing, and
- (b) each unit subsequently created when an amendment to the condominium plan is registered for the purpose of consolidating a subsequent phase into the condominium plan.

**(2)** Notwithstanding subsection (1), if an easement is registered against a certificate of title of a unit and that easement does not affect the unit, the Registrar may, on being satisfied that such is in fact the case, discharge the easement from that certificate of title and endorse the easement on the condominium plan.

## Part 3.1 Conversions

### Interpretation

**45.1** In this Part, “deficiency” includes damage and defect.

AR 181/2017 s12

# FOR DISCUSSION ONLY

## 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 the building.

**(2)** A person engaged to prepare a building assessment report may

- (a) retain the services of any expert or professional that the person considers necessary for the purposes of conducting an inspection and preparing a report, or
- (b) require any person to provide drawings, specifications or information that may reasonably be relevant to the inspection that are in the possession or control of the person.

AR 181/2017 s12

## 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 of any deficiencies in respect of
  - (i) each delivery and distribution system in the building,
  - (ii) any mechanical system in the building,
  - (iii) the building envelope, as defined in section 1(1)(g) of the *New Home Buyer Protection Act*, including
    - (A) the roofing and sub-roof installation, including water and vapour control 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, and
    - (B) grade and landscaping drainage courses,
- and
- (v) the load-bearing parts in the building as the building was built;
- (b) a report on the results of the survey of occupants conducted under section 45.2(1).

# FOR DISCUSSION ONLY

- (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 first unit in the building is offered for sale.

AR 181/2017 s12

## 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

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

AR 181/2017 s12

## Part 4 Amalgamation

### Definitions

**46** In this Part,

- (a) “adjacent parcel” means 2 or more parcels that are adjoining or are separated only by
  - (i) a highway as defined in the *Traffic Safety Act* or the successor to that Act,
  - (ii) a right of way for a pipeline,
  - (iii) a right of way for a public utility as defined in section 1 of the *Municipal Government Act*,
  - (iv) a right of way for a railway, or
  - (v) 2 or more highways and rights of way referred to in subclauses (i) to (iv);
- (b) “amalgamated condominium plan” means the condominium plan created out of the amalgamation of 2 or more condominium plans;
- (c) “amalgamated corporation” means the corporation created out of the amalgamation of 2 or more corporations;
- (d) “amalgamated parcel” means the parcel created out of the amalgamation of 2 or more parcels;
- (e) “amalgamating condominium plan” means a condominium plan that is amalgamated, or is proposed to be amalgamated, with one or more other condominium plans to create an amalgamated condominium plan;

## FOR DISCUSSION ONLY

- (f) “amalgamating corporation” means a corporation that is amalgamated, or is proposed to be amalgamated, with one or more other corporations to create an amalgamated corporation;
- (g) “amalgamating parcel” means a parcel that is amalgamated, or is proposed to be amalgamated, with one or more other parcels to create an amalgamated parcel.

AR 168/2000 s46;221/2004

### Authority to amalgamate

**47(1)** Two or more adjacent parcels that are the subject of condominium plans may, in accordance with this Part, be amalgamated so that the amalgamating parcels become one amalgamated parcel.

**(2)** Where 2 or more adjacent parcels are amalgamated, the condominium plans registered and the corporations existing in respect of each of those amalgamating parcels are, in accordance with this Part, amalgamated so that

- (a) the amalgamating condominium plans become one amalgamated condominium plan, and
- (b) the amalgamating corporations become one amalgamated corporation.

### Pre-amalgamation meeting

**48(1)** Where it is proposed that 2 or more adjacent parcels be amalgamated, each amalgamating corporation shall convene a meeting of its owners for the purpose of presenting to the owners the proposal respecting the amalgamation of the parcels.

**(2)** A notice of a meeting convened under this section must, at least 30 days before the day on which the meeting is to be held, be given to

- (a) all the owners, and
- (b) all registered mortgagees.

### Amalgamation disclosure statement

**49** Prior to or at the time of giving notice of a meeting under section 48, the corporation must provide to the persons entitled to notice under section 48 a copy of an amalgamation disclosure statement setting out at least the following:

- (a) a description of the proposed amalgamated parcel;
- (b) a plan that sets out the location of buildings, structures, roadways, walkways, parking areas, pools, patios and similar items located on the proposed amalgamated parcel;
- (c) the method of selection of the board as provided for under the proposed by-laws;
- (d) the proposed amalgamated condominium plan;
- (d.1) a description of the proposed managed property, if any, as provided for under the proposed bylaws;

## FOR DISCUSSION ONLY

- (e) the current financial statement of each of the amalgamating corporations, including the assets and liabilities of the amalgamating corporations;
- (f) the proposed reallocation of unit factors;
- (g) the reserve funds of each of the amalgamating corporations;
- (h) the proposed amount of the reserve fund of the proposed amalgamated corporation;
- (i) the proposed by-laws of the proposed amalgamated corporation;
- (j) the proposed new contributions, if any, that are to be levied
  - (i) for the administrative expenses, and
  - (ii) for the reserve fund as defined in section 21(1)(d),  
of the proposed amalgamated corporation.

AR 168/2000 s49;181/2017

### Resolutions of the owners

**50(1)** An amalgamation of parcels is not to take place unless a special resolution of each corporation is in force

- (a) approving the amalgamation of the parcels, and
- (b) approving the proposed by-laws of the proposed amalgamated corporation.

**(2)** A special resolution referred to in subsection (1) may include any terms or conditions respecting the amalgamation

- (a) that must be met before the amalgamation may proceed, or
- (b) to which the amalgamation is subject.

**(3)** Where 2 or more amalgamating corporations pass special resolutions referred to in subsection (1), the special resolutions are inoperative unless the proposed by-laws approved by each of the special resolutions are identical.

### Registration

**51(1)** In order for an amalgamation of adjacent parcels to be registered, the Registrar must be provided with

- (a) the documents, properly executed, setting out the special resolutions passed in respect of each of the amalgamating parcels,
- (b) a plan showing the amalgamation of the amalgamating condominium plans, and
- (c) the by-laws referred to in section 50(1)(b).

**(2)** The plan referred to in subsection (1)(b) must

- (a) set out the amalgamating condominium plans;

## FOR DISCUSSION ONLY

- (b) show the numbering and location of the units in relation to each other and the common property;
  - (c) include a table setting out
    - (i) the old unit numbers and the new unit numbers,
    - (ii) the unit factors, and
    - (iii) the floor or ground area of the units;
  - (d) set out the method by which the unit factors were calculated;
  - (e) set out the address for service of the amalgamated corporation;
  - (f) contain an acknowledgment by each of the amalgamating corporations that the information contained in the plan is accurate;
  - (g) set out the name of the person who prepared the plan;
  - (h) set out any other information as may be required by the Registrar.
- (3) On the registration of the documents referred to in subsection (1), the Registrar
- (a) must register a new amalgamated condominium plan that is comprised of the amalgamating condominium plans;
  - (b) must issue a new condominium plan number for the amalgamated corporation;
  - (c) must cancel the amalgamating condominium plans;
  - (d) must cancel the existing certificate of title of each of the owners and issue in the name of the owner a new certificate of title that
    - (i) sets out the new unit factors applicable to that unit, and
    - (ii) is subject to the encumbrances that were registered against the certificate of title that was cancelled;
  - (e) may add additional sheets to the amalgamated condominium plan in order to contain the information relating to the amalgamated condominium plan;
  - (f) may make on the amalgamating condominium plans and amalgamated condominium plan whatever notations that are required in the opinion of the Registrar to give effect to the amalgamation.
- (4) On the registration of the documents referred to in subsection (1),
- (a) the amalgamating parcels are amalgamated into one amalgamated parcel,
  - (b) the amalgamating condominium plans are amalgamated into one amalgamated condominium plan,
  - (c) the amalgamating corporations are amalgamated into one amalgamated corporation under the name “Condominium Corporation No.     ”, and
  - (d) the proposed by-laws referred to in section 50(1)(b) become the by-laws of the amalgamated corporation.



# FOR DISCUSSION ONLY

## Amalgamated corporation

**52(1)** On the amalgamation of the amalgamating corporations into an amalgamated corporation,

- (a) the boards of the amalgamating corporations cease to exist, and
- (b) the persons who were the members of the boards of the amalgamating corporations become the temporary board of the amalgamated corporation.

**(2)** The temporary board holds office until a meeting of the amalgamated corporation is convened and a board is elected.

AR 168/2000 s52;181/2017

## Notification of amalgamation

**53** On the amalgamation of 2 or more amalgamating parcels into an amalgamated parcel, the amalgamated corporation must notify the following persons of the amalgamation:

- (a) all the owners;
- (b) all the insurers who were insurers of the amalgamating corporations;
- (c) all the creditors of the amalgamating corporations;
- (d) all the mortgagees who have mortgages registered against the certificates of title to the units;
- (e) the municipal authority within which the amalgamating parcels are located.

## Meeting of corporation

**54** Within 6 months from the day that the Registrar registers the amalgamation of 2 or more amalgamating parcels, the amalgamated corporation must, for the purpose of electing a board, convene a meeting of the persons who are entitled under the Act to vote.

## Capital replacement reserve fund

**55** For the purposes of Part 2,

- (a) where, with respect to an amalgamated corporation, one or more of the amalgamating corporations existed immediately before September 1, 2000, the amalgamated corporation is considered to be a corporation that came into existence before September 1, 2000, or
- (b) where, with respect to an amalgamated corporation, none of the amalgamating corporations existed before September 1, 2000, the amalgamated corporation is considered to be a corporation that came into existence on or after September 1, 2000.

## Assumption of obligations

**56** On the amalgamation of 2 or more amalgamating corporations, the amalgamated corporation

## FOR DISCUSSION ONLY

- (a) assumes all the obligations, rights and property of the amalgamating corporations, and
- (b) becomes a party to any legal proceeding in existence at the time of the amalgamation to which an amalgamating corporation was a party.

### **Part 5** **Modification of Condominium Plans**

#### **Application of Part**

**57(1)** This Part applies to a modification of a condominium plan provided for under section 20(2) of the Act.

**(2)** A reference in this Part to a plan of consolidation is a reference to a plan of redivision under section 20 of the Act under which 2 or more units are consolidated into one consolidated unit.

AR 168/2000 s57;108/2004

#### **Notification of consolidation of units**

**58(1)** The owners who wish to consolidate 2 or more units into one consolidated unit must

- (a) give notice of the proposed consolidation to the board and to the holders of any interests registered against the certificates of title to the units,
- (b) provide to the board any documentation and information that the board may reasonably request that relates to the proposed consolidation,
- (c) if the external boundaries of the proposed consolidated unit are to be different than the external boundaries of the existing units that are being consolidated as shown on the existing condominium plan, provide to the board a plan of consolidation provided by a land surveyor setting out the location of the external boundaries of the proposed consolidated unit,
- (d) provide to the board all the appropriate consolidation documents and approvals, and
- (e) obtain the approval of the board for the consolidation.

**(2)** For the purposes of this section,

- (a) a reference to the external boundaries of the existing units is a reference to the external boundaries other than those portions of those boundaries that will, on the consolidation taking place, be contained entirely within the consolidated unit, and
- (b) a reference to a land surveyor is a reference to a person referred to in section 10(1)(b)(i) of the Act.

AR 168/2000 s58;108/2004

#### **Common property**

**59** If common property is affected by the consolidation of the units, section 49 of the Act applies in respect of the consolidation of the units insofar as the consolidation affects the common property.

AR 168/2000 s59;108/2004

# FOR DISCUSSION ONLY

## Registration of consolidation

### 60(1) On the registration

- (a) of a certificate in Form 12 indicating the board's approval of the consolidation of the units, and
- (b) where required under section 58, of the plan of consolidation referred to in section 58(1)(c),

the Registrar is to amend the condominium plan so that the units are consolidated into one unit.

(2) Notwithstanding subsection (1), the Registrar shall not amend a condominium plan unless any encumbrances registered against the certificates of title to the units that are the subject of the consolidation are identical or the holder of each encumbrance has given a consent to the consolidation.

## Part 6 Insurance

### Perils to be insured against

61(1) For the purposes of section 47(1)(a), (b) and (c) of the Act, a corporation must place and maintain insurance against the following perils:

- (a) fire;
- (b) leakage from fire protective equipment;
- (c) lightning;
- (d) smoke;
- (e) windstorm;
- (f) hail;
- (g) explosion of natural, coal or manufactured gas;
- (h) water damage caused by flood;
- (i) water damage caused by sewer back-up or the sudden and accidental escape of water or steam from within a plumbing, heating, sprinkler or air conditioning system or a domestic appliance that is located within an insured building;
- (j) impact by aircraft, spacecraft, watercraft and land vehicles;
- (k) riot, vandalism or malicious acts;
- (l) any other perils as required in the by-laws.

(2) Notwithstanding subsection (1), in respect of a bare land unit, a corporation is, unless the by-laws provide otherwise, required to place and maintain insurance against only those perils referred to in subsection (1)

- (a) to which the bare land unit may be at risk, or

## FOR DISCUSSION ONLY

(b) to which the property for which the corporation is responsible may be at risk.

(3) Notwithstanding subsection (1)(h), for the purposes of section 47(1)(a), (b) and (c) of the Act the peril referred to in subsection (1)(h) is excluded where coverage against that peril is not available for the property being insured.

(4) The perils referred to in subsection (1)(a) to (k) refer to those perils covered by standard insurance policies and as customarily understood in the insurance industry.

(5) The insurance coverage referred to in section 47(7) of the Act and the extent or amount of liability and the perils to be insured against under section 47(7) of the Act are subject to any limitation, exception, exclusion or restriction that

(a) is usual and customarily imposed or provided for in the insurance industry, or

(b) is reasonable in the circumstances,

as may from time to time be imposed or otherwise provided for by the insurer.

(6) For the purposes of the Act and this Regulation, insurance placed by a corporation is not to be considered inadequate by reason only that the insurance is subject to any limitation, exception, exclusion or restriction that

(a) is usual and customarily imposed or provided for in the insurance industry, or

(b) is reasonable in the circumstances,

as may from time to time be imposed or otherwise provided for by the insurer.

AR 168/2000 s61;23/2001;108/2004

### Amount of insurance

**62** Property that is insured as required pursuant to section 47 of the Act must be insured for replacement value subject to any reasonable deductible that is agreed to by the board and the insurer.

AR 168/2000 s62;108/2004

### Owner insurance

**62.1** A corporation may, by bylaw

(a) require owners to purchase insurance with respect to their unit and personal property in the unit,

(b) specify the type of insurance to be purchased by owners, and

(c) specify the proof an owner must provide to the corporation respecting the insurance purchased.

### Corporation insurance on fixtures

**62.2(1)** A corporation shall, at a minimum, insure to replacement value the fixtures installed by the developer as part of the original construction, unless bylaws require that additional insurance be provided by the corporation respecting fixtures.

Allows corporations to pass bylaws that would require owners to purchase insurance on their own belongings or improvements.

Corporations have to insure units, but not improvements to units. This clarifies that an improvement is any change from the original installations done by the developer.

# FOR DISCUSSION ONLY

(2) For greater certainty, improvements made to the units by the owners, referred to section 47(1)(c) of the Act, do not include fixtures that must be insured by a corporation under subsection (1).

Ensures corporations are responsible for overseeing repairs of those parts of a unit the corporation has to insure, and the owner is responsible for all other repairs.

## Repairs to unit after insured loss

**62.3(1)** A corporation shall make repairs or arrange for and supervise repairs to a unit after an insured loss, where the corporation is responsible for insuring the property affected by the loss.

(2) A corporation is not responsible for making or arranging for repairs after an insured loss where the loss is related to property which the corporation is not required to insure, including improvements made by the owner or to property covered by insurance specified by corporation bylaws as being the responsibility of the owner.

(3) Nothing in this section precludes a corporation from, by bylaw, assigning responsibility for repairs of a non-residential unit.

(4) Despite subsection (2), a corporation is authorized to make or arrange for and supervise repairs after an insured loss that would otherwise be covered by insurance that is the responsibility of the owner if

- (a) the owner has not commenced repairs within a reasonable amount of time, and
- (b) the corporation has provided reasonable notice to the owner.

(5) A corporation may recover the cost of the actions taken under the authority of subsection (4) from the owner of the unit being repaired.

Allows a corporation to claim back an insurance deductible from an owner if the owner or their tenant caused or failed to prevent the damage that caused the claim.

## Recovery of amount of deductible

**62.4** A corporation that pays the amount of the deductible in an insurance claim respecting an insured loss may recover the amount of the deductible from an owner where the owner or a tenant or invitee of the owner caused the loss through an act or omission.

## Fidelity bond

**62.5(1)** Subject to subsection (3), a corporation shall, for each member of the board and manager, obtain a fidelity bond that covers malfeasance by a member of the board or by a manager.

(2) A fidelity bond must be in an amount that is at least the sum of

- (a) the reserve fund balance at the start of the current fiscal year,
- (b) the maximum balance of the operating account during the previous 12 month period, and
- (c) the 3 largest monthly condominium contributions over the past fiscal year.

(3) A corporation shall review the amount of a fidelity bond at least once every 2 years.

(4) Subsections (1) to (3) do not apply to a corporation if the certificate of title to each of the units included in the condominium plan is registered in the name of the same owner or the same group of owners.

Requires corporations to purchase fidelity bonds, which insure the corporation if a board member or manager defrauds or steals from the corporation.

# FOR DISCUSSION ONLY

## Part 7 Purchaser's Protection Programs

### Definitions

**63** In this Part,

- (a) “common property” means common property to which section 14 of the Act applies;
- (b) “cost consultant” means a cost consultant referred to in section 14(1)(b) of the Act;
- (c) “program provider” means a person who operates a purchaser's protection program;
- (d) “purchaser's protection program” means a plan, agreement, scheme or arrangement that meets the requirements referred to in section 67.

AR 168/2000 s63;108/2004

### Application of Part

**64(1)** This Part applies only to loss by a purchaser resulting from a developer's failure to complete the construction of units and the related common property or either of them.

(2) Nothing in this Part is to be construed so as to limit or restrict the rights of a purchaser under a purchase agreement or that the purchaser otherwise has at law.

### Approval of Minister

**65** The Minister will only consider a purchaser's protection program for approval under section 14(10) of the Act if that program meets the requirements of this Part.

AR 168/2000 s65;108/2004

### Purchaser's protection program having general application

**66(1)** Once a purchaser's protection program that is intended to be of general application is approved by the Minister, any developer who comes under that program may apply that program in respect of any of that developer's property that is governed by the Act if that property is enrolled in that program.

(2) Notwithstanding subsection (1), if after a purchaser's protection program is approved by the Minister a significant change is to be made to that program, that change must be approved by the Minister under section 14(10) of the Act before it is incorporated into that program.

(3) A purchaser's protection program referred to in subsection (1) is not to be applied in respect of any property that is governed by the Act until there has been published in Part I of The Alberta Gazette

- (a) a notice summarizing the terms and conditions of the program, and
- (b) a notice of the approval of the program by the Minister.

AR 168/2000 s66;108/2004

# FOR DISCUSSION ONLY

## Requirements of a purchaser's protection program

**67(1)** In this section, “purchase money” means all or any portion of the money paid to a developer by a purchaser for the purchase of a unit.

**(2)** In order to qualify as a purchaser's protection program that may be approved by the Minister under section 14(10) of the Act, the program must be

- (a) a plan, agreement, scheme or arrangement that,
  - (i) in respect of a unit being purchased, provides for the receipt, handling and disbursement of the purchase money and under which the money is to be paid to and held by a third party and is to be disbursed by that third party to the developer, based on the progress of construction of the unit and the related common property as determined by a cost consultant, and
  - (ii) provides for the refund to the purchaser of undisbursed purchase money in the event of the developer's failure to complete the construction of the unit or the related common property or both,
- (b) a plan, agreement, scheme or arrangement that provides for an indemnity under which the program provider agrees to indemnify a purchaser of a unit against the loss of the purchaser's money, where that loss is incurred as a result of the developer's failure to complete the construction of the unit or the related common property or both, or
- (c) a plan, agreement, scheme or arrangement that provides for the program provider, at the option of the program provider, to either
  - (i) refund to the purchaser of a unit the purchase money, where the purchaser suffers loss as a result of the developer's failure to complete the construction of the unit or the related common property or both in accordance with the purchase agreement, or
  - (ii) complete the unit and its proportionate share of the related common property in accordance with the purchase agreement where the unit and the related common property have not been completed as a result of the developer's failure to complete the construction of the unit or the related common property or both in accordance with the purchase agreement.

**(3)** A purchaser's protection program referred to in subsection (2) is subject to the terms, conditions, exceptions, exclusions and limitations approved by the Minister as set out in the certificate issued under section 69.

AR 168/2000 s67;108/2004

## Form of purchaser's protection program

**68** A purchaser's protection program may be in the form of a warranty program, an irrevocable letter of credit, a performance bond, a bond or a similar financial instrument issued by a financial institution, insurance company or a program provider, as the case may be.

## Certificate of sponsor

**69(1)** A purchaser's protection program must provide that where a purchaser enters into a purchase agreement with a developer for the purchase of a unit, the program

## FOR DISCUSSION ONLY

provider must, subject to subsection (2), provide to the purchaser a certificate setting out at least the following:

- (a) that the purchaser's protection program, together with any amendments to it, has been approved by the Minister in accordance with the Act and this Regulation;
  - (b) the name and address of the program provider;
  - (c) that the developer is enrolled under the program;
  - (d) that the property being purchased is enrolled in the program;
  - (e) the date on which the benefits provided for under the program take effect;
  - (f) the date on which the benefits provided for under the program terminate or the method by which that date is fixed or is to be fixed;
  - (g) in the case of a purchaser's protection program of the type referred to in section 67(2)(a),
    - (i) the name of the party responsible for the receipt, handling and disbursement of the money,
    - (ii) the terms and conditions governing the receipt, handling and disbursement of the money, and
    - (iii) any exceptions or exclusions that would limit the liability of the sponsor, including, without restriction, any monetary limits or time limits;
  - (h) in the case of a purchaser's protection program of the type referred to in section 67(2)(b) or (c),
    - (i) the circumstances under which the purchaser's protection program may be relied on, and
    - (ii) any exceptions or exclusions that would restrict a purchaser's ability to rely on the purchaser's protection program, including, without restriction, any monetary limits or time limits.
- (2) A program provider must provide a certificate under subsection (1) to a purchaser forthwith after the program provider has been notified that the purchase agreement has been entered into.

### **Part 8** **Amendment of Condominium Plans**

#### **To be amended in accordance with this Part**

**70** Except as otherwise provided for under the Act or this Regulation, a condominium plan may only be amended in accordance with this Part.

#### **Amendments by corporations**

**71(1)** A corporation may register an amendment to a condominium plan to amend that condominium plan if the following requirements have been complied with:



## FOR DISCUSSION ONLY

- (a) a special resolution of the corporation has been passed and is in force approving the amendment;
  - (b) in the case of an amendment that relates to
    - (i) any alteration of the boundaries of the parcel, the amendment is endorsed with or accompanied by a certificate of a land surveyor stating
      - (A) that the altered boundaries have been established or re-established in accordance with the *Surveys Act*, and
      - (B) that there are not any projections from other property infringing on the altered boundaries or, if there are projections from other property infringing on the altered boundaries, an appropriate easement exists in respect of the parcel for those projections,
    - or
    - (ii) a change to the location of a building or a portion of a building as shown on the condominium plan, the amendment is endorsed with or accompanied by a certificate of a land surveyor stating that the building or a portion of the building as shown on the condominium plan as amended is within the external boundaries of the parcel that is the subject of the condominium plan and, if any projections project beyond those external boundaries, that an appropriate easement has been granted as an appurtenance to the parcel;
  - (c) in the case of an amendment that relates to a change in the units, the amendment is endorsed with or accompanied by a certificate of an architect, engineer or land surveyor stating that the change to the units as provided for in the amendment has in fact taken place or will become effective on the registration of the amendment;
  - (d) in the case of an amendment that relates to a change in the common property, the amendment is endorsed with or accompanied by a certificate of an architect, engineer or land surveyor stating that the change to the common property as provided for in the amendment has in fact taken place or will become effective on the registration of the amendment;
  - (e) in the case of an amendment that relates to a matter that needs the approval of the municipal authority, the amendment is endorsed with or accompanied by a certificate of the municipal authority or of a person designated by the municipal authority stating that the approval has been given by the municipal authority;
  - (f) the Court has by an order made under subsection (5) approved the amendment;
  - (g) that any conditions imposed by the Court under subsection (5) have been complied with.
- (2) For the purpose of amending a condominium plan under this section, the corporation may apply to the Court for an order approving the amendment to the condominium plan.

## FOR DISCUSSION ONLY

- (3) Where the corporation applies for an order approving an amendment, the corporation must, unless otherwise directed by the Court, give notice of the application to the owners and to each holder of a registered encumbrance.
- (4) Where the Court is of the opinion that the nature of the amendment to the condominium plan is such that a certificate required under subsection (1) is not necessary, the Court may waive that requirement.
- (5) On an application under subsection (2), the Court may, if it is satisfied that the interests of the persons to whom notice of the application is given will not be unfairly prejudiced, make an order
- (a) approving the amendment to the condominium plan;
  - (b) imposing any conditions in respect of the order that the Court considers appropriate in the circumstances;
  - (c) awarding costs in respect of the application.
- (6) On presentation of the order of the Court made under subsection (5), the Registrar is to amend the condominium plan in accordance with the order.

### Doors and windows

**72(1)** In this section, “doors and windows” means doors and windows as referred to in section 9(3) of the Act.

- (2) Notwithstanding section 9(2) of the Act or section 71 of this Regulation, if
- (a) immediately prior to September 1, 2000 the doors and windows of a unit that are located on the exterior walls of the unit were part of the unit, and
  - (b) by virtue of section 9(2) of the Act, on September 1, 2000 the doors and windows referred to in clause (a) became part of the common property,

the corporation before September 1, 2002 may, by a special resolution, amend the condominium plan so that doors and windows referred to in clause (b) cease being part of the common property and become a part of the unit.

- (3) On presentation of a special resolution passed pursuant to subsection (2), the Registrar is to amend the condominium plan so that the doors and windows that are the subject of the special resolution are part of the unit.

AR 168/2000 s72;108/2004

### Documentation must be completed

**73** Where this Regulation or the Act provides that a condominium plan may be amended, the Registrar is to amend the condominium plan on being provided with the appropriate documentation that is completed in a manner acceptable to the Registrar.

# FOR DISCUSSION ONLY

## Part 8.01 Transfer, Lease or Sale of Common Property, Easement or Covenant or Condominium Parcel

Requires the corporation to get consent of 80 per cent of persons with registered interests on units, such as lenders, before selling or leasing common property or selling the condominium building after winding up the corporation.

Requires a corporation that intends to sell the building as part of winding up the corporation to hold an information meeting for owners and registered interest holders.

### Transfer, lease, sale of common property or condominium parcel

**73.01(1)** Before a corporation proceeds with a transfer or lease of common property under section 49 of the Act, the corporation shall obtain the consent in writing of 80 per cent of the persons having registered interests in the parcel to

- (a) the release of those interests in respect of the land comprised in the proposed transfer or lease, or
- (b) the execution of the proposed transfer or lease.

**(2)** Before a corporation grants an easement or covenant burdening a parcel under section 52 of the Act, the corporation shall obtain the consent in writing of 80 per cent of the persons having a registered interest in the parcel to the release of those interests in respect of the land comprised in the proposed easement or covenant.

**(3)** Before a corporation proceeds with a transfer of a parcel or part of a parcel under section 63 of the Act, the corporation shall

- (a) hold a meeting of the owners and persons having registered interests in the parcel, and
- (b) obtain the consent in writing of 80 per cent of the persons having a registered interest in the parcel to the release of the interest in respect of the land comprised in the proposed disposition.

**(4)** A corporation shall provide the following information to persons attending a meeting under subsection (3)(a):

- (a) the reason for the termination of the corporation;
- (b) the status of the termination process;
- (c) details of the proposed sale;
- (d) a statement of the proportion of the sale proceeds to be allocated in respect of each unit;
- (e) a list of the registered interest holders who will be asked to consent to the release of their interests in respect of the parcel;
- (f) any other factors the corporation considers relevant to the owners and registered interest holders in respect of the sale.

**(5)** On registration by the Registrar of a transfer executed under section 63 of the Act, the proceeds of the sale shall be distributed to the owners of the units in the condominium plan in shares proportional to the unit factors of the owner's respective units, subject to subsections (6) and (7).

**(6)** Nothing in this section affects a claim by a person having a registered interest in the parcel to sale proceeds arising under this section.

# FOR DISCUSSION ONLY

(7) A unit owned by a corporation is allocated zero unit factors for the purposes of the distribution of proceeds of a sale.

## Part 8.1 Administrative Penalties, Service

### 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
  - (i) the right to appeal to the Minister under section 78.5 of the Act,
  - (ii) the particulars of how an appeal is to be made, and
  - (iii) the time in which an appeal is to be made.

AR 181/2017 s15

### Time of payment of administrative penalty

**73.2** The person to whom an administrative penalty is issued shall pay the penalty

- (a) within 30 days after receipt of the notice of administrative penalty, or
  - (b) within the time period specified in the notice of administrative penalty,
- whichever is later.

AR 181/2017 s15

### Service of Director's orders, notices

**73.3(1)** A Director's order issued, reconsidered or varied under the Act and a notice of administrative penalty or other written notice or document required by the Act to be issued or sent by the Director must be served

- (a) in the case of an individual,
  - (i) by personal service,
  - (ii) by leaving it for the individual with a person apparently at least 16 years of age at the individual's current or most usual dwelling place,
  - (iii) by sending it by recorded mail to
    - (A) the individual's last known address, or

## FOR DISCUSSION ONLY

(B) the most recent address provided by the individual to the Director,

or

(iv) by sending it by facsimile or other form of electronic transmission to the individual's last known facsimile number or electronic address, if there is a record of so sending it,

and

(b) in the case of a corporation,

(i) by leaving it with a director, manager or officer of the corporation, or the president, chairperson or other head officer, by whatever name that person is known, of the corporation,

(ii) by leaving it at the corporation's registered office,

(iii) by sending it by recorded mail to

(A) an address for the corporation listed in a purchase agreement, or

(B) the corporation's registered office,

(iv) in the case of an extraprovincial corporation, by leaving it with, at the address of, or by sending it by recorded mail to the address of

(A) the corporation's attorney for service appointed as required by the *Business Corporations Act*,

(B) an address in Alberta for the corporation listed in a purchase agreement, or

(C) the corporation's principal place of business in Alberta,

or

(v) by sending it by facsimile or other form of electronic transmission to the corporation's last known facsimile number or electronic address, if there is a record of so sending it.

(2) Service is effected under subsection (1)(a)(iv) or (b)(v) when the sender obtains or receives confirmation of the successfully completed transmission.

(3) Service by recorded mail is not invalid by reason only that

(a) the addressee refuses to take delivery of the mail,

(b) the addressee returns the mail, or

(c) the addressee no longer resides or is otherwise not present at the address and has not provided the postal service with a current mailing address.

AR 181/2017 s15

### Part 8.2 Appeals

# FOR DISCUSSION ONLY

## Appeal fee

**73.4** 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.

AR 181/2017 s15

## Part 8.3 Notices, Notifications

### Electronic notices, notifications

**73.5(1)** Subject to subsection (2), where an owner has requested disclosure by electronic means from a corporation and has provided an electronic address for this purpose, the corporation shall send notices, including without limitation, notices of meetings or non-compliance with bylaws and notification of new rules by electronic means to that address.

(2) Subsection (1) does not apply to a corporation for a condominium that consists of fewer than 13 units.

(3) A notice or notification sent in accordance with subsection (1) is considered to have been received by the owner 24 hours after it is sent by electronic means to the electronic address referred to in subsection (1).

### Notification of new rule

**73.51(1)** Subject to subsections (2), (3) and (4), at least 30 days before a (new) rule is to come into effect, a corporation shall provide written notice of the new rule, delivered to

- (a) each occupied unit in the condominium, and
- (b) the address of each owner who is not residing in the condominium.

(2) A corporation may, without providing written notice under subsection (1), establish a rule with immediate effect if the rule

- (a) addresses a safety concern, a security concern, or an emergency, including an emergency resulting from one of the circumstances set out in section 20.1(1)(a) to (g), and
- (b) ceases to apply when the safety concern, security concern or emergency no longer exists.

(3) A corporation shall provide notice to owners and occupants of a rule described in subsection (2) as soon as possible after the rule is established.

(4) Subject to subsection (2), a rule is of no force or effect until the notice period in subsection (1) has expired.

(5) Subsection (1)(b) does not apply if the certificate of title to each of the units included in the condominium plan is registered in the name of the same owner or the same group of owners.

### Consequences of non-compliance with bylaw

**73.52(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.

Corporations will have to send electronic notices to owners that request them.

Requires the corporation to notify all owners and anyone else living in the building, such as tenants, when a new rule is created.

Requires corporations to serve a notice on a person who is believed to have broken the bylaws or rules before a sanction or fine may be issued.

## FOR DISCUSSION ONLY

- (2) A notice of proposed sanction must contain the following information:
- (a) the unit number associated with the failure to comply with a bylaw;
  - (b) the name of the person subject to the proposed sanction, if known;
  - (c) the provision of the bylaw that has not been complied with;
  - (d) if the sanction is provided for in a bylaw in respect of non-compliance with a rule, the rule that has not been complied with;
  - (e) the date and time of the non-compliance, if applicable;
  - (f) other relevant particulars of the failure to comply;
  - (g) if applicable, the maximum monetary sanction for non-compliance with the bylaw;
  - (h) a description of corrective or other action, if any, that must be taken in respect of the non-compliance;
  - (i) the deadline, which must be at least 24 hours after service of the notification, for taking the required actions or providing a written response to the notification;
  - (j) the date of the board resolution approving the notice of proposed sanction.
- (3) A person who is served with a notice of proposed sanction must be provided at least 24 hours to provide a written response to the notice or comply with the actions required under the notice.
- (4) When the deadline for a written response or corrective actions has expired and the corporation is not satisfied with the response or actions, if any, the corporation may, in accordance with subsection (5), impose a sanction on the person named in the notice of proposed sanction.
- (5) A corporation imposing a sanction shall serve on the person subject to the sanction a notice of sanction that contains the following information:
- (a) in respect of a monetary sanction, the amount of the sanction and the instructions and the deadline for payment of the sanction;
  - (b) in respect of a sanction other than a monetary sanction, a description of the sanction and the date and time at which it comes into effect;
  - (c) reasons for issuing the sanction;
  - (d) the date of the board resolution approving the sanction.
- (6) Where a person who is the subject of a proposed sanction is not an owner, a notice required to be served under this section may be served on the person electronically, if the person has provided the board with an electronic address, by personal service, ordinary or recorded mail addressed to the unit with which the sanction is associated, or by being left with a person apparently over the age of 18 years at the unit.
- (7) Service is deemed to have been effected

## FOR DISCUSSION ONLY

- (a) on the date on which acknowledgment of receipt of recorded mail is signed,
- (b) 7 days after the date on which the document is sent by ordinary mail, or
- (c) 24 hours after the document is sent by electronic means.

Sets maximum fines for breaking a bylaw. These fines can increase if the person breaks the same bylaw more than once.

### Maximum monetary sanctions

**73.53(1)** Subject to subsection (2), the maximum monetary sanction that may be imposed by a corporation for the failure to comply with a bylaw is as follows:

- (a) for non-compliance with a bylaw
  - (i) in respect of a residential unit, bare land unit, parking space or storage unit in a residential condominium building, \$200 for the first instance of non-compliance and \$500 for the second and subsequent instances of non-compliance, or
  - (ii) in respect of
    - (A) a non-residential unit, other than a parking space or storage unit in a residential condominium building, or
    - (B) a bare land unit that is not a residential unit,\$1000 for the first instance of non-compliance and \$2500 for the second and subsequent instances of non-compliance;
- (b) for non-compliance with a rule in respect of which a bylaw provides for a sanction, \$50.

**(2)** A monetary sanction must not exceed the lower of the applicable maximum sanction amount set out in subsection (1) and the maximum sanction amount, set out in the corporation's bylaws or rule established under a bylaw.

**(3)** The aggregate maximum sanction for non-compliance with a single bylaw arising from the same event or series of events is \$10 000.

## Part 9 Miscellaneous

### Fees under the Land Titles Act

**74** The fees payable to the Registrar in respect of matters under the Act are the fees payable to the Registrar under the *Tariff of Fees Regulation* (AR 120/2000) or as otherwise provided for under an enactment.

### Reasonable expenses re caveat

**74.1** The following expenses may be added to a caveat registered against the title of a unit:

- (a) reasonable fees and disbursements associated with preparing and registering the caveat;
- (b) the cost of registering the caveat under the *Land Titles Act*.

Allows a corporation that registers a caveat for unpaid condominium fees or special assessments to add the full cost of registration onto the caveat.



# FOR DISCUSSION ONLY

Sets the maximum rental deposit a corporation may charge a landlord to one month's rent, and requires detailed statements if money is taken off this deposit.

Clarifies the corporation does not have to pay for parking stalls that must be transferred as part of a plan of redivision.

Removes units owned by the corporation from the condominium fee calculation.

## Maximum rental deposit

**74.2** For the purposes of section 53 of the Act, the maximum rental deposit that may be charged is prescribed to be the maximum security deposit permitted under section 43 of the *Residential Tenancies Act*.

## Statement of account for rental deposits

**74.3** A statement of account under section 53(7) of the Act must include an itemized list of the deductions from the rental deposit and the purpose for which each deduction was made.

## No compensation for transferred parking unit

**74.4** An owner of a parking space unit that must be transferred to the corporation under section 20(9) of the Act is not entitled to any compensation respecting that unit or transfer.

## No unit factors for corporation owned unit in condominium contribution calculation

**74.5** A unit owned by a corporation is allocated zero unit factors for the purposes of calculating monthly unit condominium contributions.

## Fee payable to a municipality

**75** A municipal authority may require the payment of a fee of not more than \$40 per unit when application is made to the municipal authority for the certificate referred to in section 10(1)(b)(ii) of the Act.

AR 168/2000 s75;108/2004

## Rate of interest re contributions

**76** The rate of interest that may be charged by a corporation under section 40 of the Act on any unpaid balance of a contribution owing to the corporation by an owner shall not be greater than 18% per annum.

AR 168/2000 s76;108/2004

## Mediation and arbitration

**77** If the parties to a dispute referred to in section 69 of the Act wish to deal with the dispute under section 69 of the Act but are unable to agree on a mediator or an arbitrator, as the case may be, the Alberta Arbitration and Mediation Society is, subject to any agreement between the parties, authorized to appoint a person as a mediator or an arbitrator in respect of that dispute.

AR 168/2000 s77;108/2004

## Builders' liens

**78** For the purposes of section 78(2) of the Act, on the registration of a statement of lien against a condominium plan, the Registrar must send a notice of that registration to the corporation but is not required to send notice of that registration to the owners of the units.

AR 168/2000 s78;108/2004

## Exemptions respecting non-residential units

**78.1(1)** Section 20.01(1)(d) does not apply in respect of non-residential units.

**(2)** Section 21.1 of the Act and Part 3.1 do not apply in respect of a conversion in which all units in the registered condominium plan are non-residential units.

AR 181/2017 s16

# FOR DISCUSSION ONLY

## Offence

**78.2(1)** A developer who fails to comply with section 20.09(4) is guilty of an offence.

(2) Where a body corporate is convicted of an offence, the body corporate is liable to a fine of not more than the greater of

- (a) \$100 000, and
- (b) 3 times the amount obtained by the body corporate as a result of the offence.

(3) Where an individual is convicted of an offence, the individual is liable to a fine of not more than the greater of

- (a) \$25 000, and
- (b) 3 times the amount obtained by the individual as a result of the offence.

AR 181/2017 s16

## Part 10 Transitional Provisions, Repeals, Expiry and Coming into Force

**79** Repealed AR 108/2004 s10(50).

## Transitional

**79.1(1)** In this section,

- (a) “former” means, in respect of a section of the Act, the section as it read immediately before the coming into force of the corresponding new section;
- (b) “new” means, in respect of a section of the Act, the section as it reads on the coming into force of the section of the *Condominium Property Amendment Act, 2014* that amended the corresponding former section.

(2) Where a plan that is presented for registration differs from the proposed condominium plan delivered under section 12(1) of the Act prior to the coming into force of the new section 8(1)(1.1) of the Act and the new section 10(1)(b) of the Act, a difference caused only by compliance with the new section 8(1)(1.1) of the Act or the new section 10(1)(b) of the Act

- (a) does not trigger a right of rescission under section 13 of the Act, and
- (b) does not constitute a material change for the purposes of section 13.1 of the Act.

(3) In respect of a condominium plan that is registered before the coming into force of section 10.1(1) of the Act, if no interim board has been appointed and no board has been elected under section 29 of the Act, section 10.1(1) of the Act is to be read as if “no later than 30 days after registration of a condominium plan” were struck out and “no later than 90 days after the coming into force of this section” were substituted.

## FOR DISCUSSION ONLY

- (4) Notwithstanding the repeal of the former sections 12 and 13 of the Act, the former sections 12 and 13 of the Act apply in respect of a purchase agreement entered into before the coming into force of the new section 12, section 12.2, the new section 13, and sections 13.1 and 13.2 of the Act.
- (5) References in section 14(6.1) and (7.1) of the Act to “prescribed trustee” apply only in respect of purchase agreements entered into 90 days or more after the coming into force of section 14(6.1) and (7.1) of the Act.
- (6) Section 16.1 of the Act applies
- (a) in respect of a meeting convened under section 29 of the Act less than 90 days after section 16.1 of the Act comes into force as if “at the meeting” were struck out and “as soon as possible after the meeting” were substituted, and
  - (b) in respect of a meeting under section 29 of the Act convened 90 days or more after section 16.1 of the Act comes into force without any modification.
- (7) Section 21.1 of the Act applies in respect of a conversion for which a condominium plan was registered before the coming into force of section 21.1 of the Act, but only if no purchase agreement respecting the purchase of a unit in an arms-length transaction was entered into before the coming into force of section 21.1 of the Act.
- (8) The new section 29 of the Act does not apply if, before the coming into force of the new section 29 of the Act, a meeting was convened in accordance with the former section 29 of the Act.
- (9) The new section 30(1) of the Act is to be read, in respect of a condominium plan registered 8 months or more before the coming into force of the new section 30(1), as if “no later than 12 months after the registration of the condominium plan” were struck out and “no later than 120 days after the coming into force of this section” were substituted.
- (10) A corporation shall, within 90 days of the coming into force of this subsection,
- (a) comply with the new section 32.1(4) in respect of all rules that were in effect immediately before the coming into force of this subsection, and
  - (b) ensure that all owners and all occupied units receive a copy of all rules that are in effect.
- (11) A rule for which a corporation failed to comply with subsection (10) is invalid and of no force or effect.

Corporations must tell owners and occupants about existing rules when the new regulations take effect, or those rules expire.

### Repeal

**80** The *General Regulation* (AR 89/85) is repealed.

### Expiry

**81** For the purpose of ensuring that this Regulation is reviewed for ongoing relevancy and necessity, with the option that it may be repassed in its present or an amended form following a review, this Regulation expires on August 31, ~~2018~~ 2021.

# FOR DISCUSSION ONLY

AR 168/2000 s81;354/2003;103/2011;139/2016

## **Coming into force**

**82** This Regulation comes into force on September 1, 2000.

DRAFT