



your condo connection

Stage 2 - Proposed Regulations Condominium Property Amendment Act

PRESENTED BY:

**Victoria Archer, Hugh Willis, Dawn Mitchell and
Anand Sharma**

Introduction

- ▶ **Welcome to our session on the Stage 2 Proposed Regulations of the Condominium Amendment Act.**
- ▶ **Thank you to our sponsors KDM Management, HUB Insurance of Canada, Condominium Financial, Wade Engineering, and the Realtors Association of Edmonton for allowing us to provide this free educational event this evening to our Members.**
- ▶ **We would also like to welcome the interested General Public who have registered for this session. Welcome to CCI!**
- ▶ **This evening we are going to address areas of concern only and this may be perceived as critical.** This is simply because of the short amount of time we have. We do agree with many of the changes in the regulations, however if we do not address the imbalances and problems that are created through poorly conceptualized or poorly worded changes owners and boards will ultimately be for the worse.
- ▶ **Recognize that board members are owners, and owners potential board members. Balance between fair governance and transparency to owners is key.**

Legislation Timeline

- ▶ **Condominium Property Amendment Act was passed in the legislature in December of 2014.** CCI North Alberta noted a number of deficiencies in the legislation, and proposed 14 amendments which were brought forwards by the opposition Alberta NDP and Alberta Wildrose. One Amendment was adopted, the remainder defeated.
- ▶ **Consultation, both through a public survey, and stakeholder meetings started in the fall of 2015.**
- ▶ **The Alberta Government ramped up the consultations related to Phase 1 (Developer/Purchaser Phase) prior to the regulations coming into effect on January 1, 2018, and April 1, 2018.**
- ▶ **Public Consultations were held across the province in the summer of 2017. Stakeholder consultations for Phase 2 were held in January/February 2018 in 7 areas (CCI North Alberta participated in all sessions).**
- ▶ **On June 28, 2018 Service Alberta released their final survey asking condominium stakeholders to provide feedback by July 31, 2018.**
- ▶ **The Government's intention is to have the regulations in place for the fall.**

#1 Document Requests

Section 20.53(1)

- Added to the s. 44 list of documents that be requested by owners and certain others - documents to be provided within 10 days
 - common property lease and exclusive use agreements - added parking & storage
 - copy of all rules established by the corporation
 - a list of the names and addresses of the members of the board
 - text of all ordinary and special resolutions and the results of the votes
 - approved draft minutes of any AGM that was held at least 31 days before the request
 - loan disclosure documents
 - reports from professionals but excluding lawyers
 - insurance certificates and copies of the complete policies
 - reserve fund plans, reserve fund reports and annual reports.

#1 - Document Requests

Section 20.53 (1)

Comments:

- List of names and addresses of Board members
 - *Recommend that this requirement be changed to require the corporation to provide copies of the filed Form 8 - Change of Directors.* This document lists the names of the Board members and their service addresses.
- Approved draft minutes of AGM's
 - The minutes are not “approved” until they have been approved by the owners, and at that point they are not considered to be approved but just “the minutes”. *It is recommended that the word “approved” be deleted.*
 - *The time requirement should be extended to 60 days* to give the Board an opportunity to have the minutes prepared and reviewed by the Board.
 - *The corporation should be required to provide draft minutes of both annual general meetings and special general meetings.*

#1 - Document Requests

Section 20.53 (1)

Comments:

- **Text of all ordinary and special resolutions and the results of votes**
 - Approved motions are resolutions. This section requires every corporation to compile a list of all motions and written resolutions since the inception of the corporation, even procedural motions and resolutions.
 - The text of all motions approved by the corporation is already available in the minutes of the general meetings.
 - *It is recommended that this requirement be amended to require production of written resolutions only because the text of those resolutions is not available in the minutes. The reference to “list of resolutions” should also be removed from Schedule 3.*
- **Reports prepared by professionals**
 - Some reports prepared by professionals may have been obtained for the purposes of litigation and should not be made available because it may jeopardize the litigation - they are “privileged documents”. *We recommend that this requirement be limited to the production of non-privileged reports and opinions only, and be time limited.*

#2 Document Disclosure

Sections 20.5, 20.51-54

- The Act and the Regulation require corporations to provide certain information and documents to owners, purchasers and mortgagees.

2 Groups:

- Documents that must be provided on written request
 - Act - s.44 documents
- Documents that must be provided without request
 - Act - s.30 (budget, financial statements, annual reserve fund reports), s.48 (insurance certificate), Reg - s. 20.5 (Board minutes, reserve fund forecast), s.20.51 (AGM Minutes, record of votes, list of board members)

#2 Document Disclosure

Sections 20.5, 20.51-54

Document Fees:

The Government responded to complaints that some condominium managers and document provider services were charging excessive fees for documents. It set maximum fees that can be charged for documents.

➤ Documents Corporations can charge for:

- S. 44 documents except Estoppel Certificates - fee set out in the Tariff of Fees Regulation
- Estoppel Certificate - 20 times the amount allowed for other documents
- Rush s. 44 Documents (except Estoppels) - 72 hours - 3 times the fee otherwise allowed

#2 Document Disclosure

Sections 20.5, 20.51-54

➤ Documents that must be provided free

- Documents provided with Notice of Annual General Meeting
 - ▶ minutes from all board meetings that have been held since the last AGM
 - ▶ forecast of the reserve fund for the next fiscal year
- Documents provided within 30 days after AGM
 - ▶ minutes of the AGM
 - ▶ records of the votes held at the AGM
 - ▶ list of the names and addresses for service of the members of the board
- Other Documents
 - ▶ Copy of the budget - before the start of the fiscal year
 - ▶ Certificate of Insurance - within 30 days of change

#2 Document Disclosure

Sections 20.5, 20.51-54

Comments:

- *It would be helpful if the fees chargeable were stated in dollar amounts.*
- “Estoppel certificate” is not defined in the Act or Regulation. It is often confused and/or combined with a s.44 “information statement”. *It is recommended that the Regulation itemized the estoppel certificate and the information statement separately.*
- Rush Fees
 - *recommended that the rush fee surcharge be reduced to 2 times the fee.*
 - *suggested that the time frame given be stated in “business days”.*
 - the person requesting the documents must have asked for it to be produced on a rush basis before the rush fee can be charged.
 - recommended that the section clarify that that the corporation is not obligated to provide documents sooner than the 10 days mandated by the Act.

#2 Document Disclosure

Sections 20.5, 20.51-54

Comments:

- *Insurance Documents*
 - The insurance certificate provides sufficient information for owners and their brokers to understand what the Corporation's insurance covers.
 - Insurance policies for Corporations are much more complex than personal insurance policies
 - Policies can be distributed if required during a claim process between brokers.
 - *Recommended that only the certificate of insurance be included in Section 44 and that insurance policies be removed from Section 20.53(1)(u).*

#2 Document Disclosure

Sections 20.5, 20.51-54

Comments:

- Documents that must be provided free
 - Nothing is free. Administration fees will increase. The Corporation will have to pay, so that means all owners will have to pay from their condominium contributions.
 - It is probably not necessary for the corporation to provide some of the documents that are required to be provided. Eg:
 - *Copies of minutes of all board meetings with the notice of AGM*
 - *Records of votes within 30 days after AGM*
- ❖ Suggestion - Set up a secure corporation web-site and post copies of documents for free download

#3 Document Retention

Section 20.55, Schedule 3

Schedule 3 has been added to the Regulation

- Many corporations and condominium managers have concerns about how long they are required to keep various documents.
- Schedule 3 sets the amount of time that corporations must keep specific documents.

#3 Document Retention

Section 20.55, Schedule 3

Comments:

- The retention periods in Schedule 3 for some documents should be re-examined.
- *The list needs to be critically vetted so that it does not require corporations, many of which have only limited document archive space, to keep documents that may never need to be referenced again, especially when copies of those documents can be obtained, if needed, from the courts or land titles.*
- It would be helpful if the Regulation specified if Corporations can keep their documents in electronic format rather than just in original “hard copy”.

#7 Meeting Notices

Sections 31.26 – 31.28

- Requires Corporations to send out a preliminary “Save the Date” notice at least 60 days in advance before the AGM. Notice must include:
 - Date of the AGM
 - Call for Agenda Items
- ***Does not address the process of a meeting needing to be rescheduled if the Corporation is unable to reach quorum or has to reschedule? (E.g. – Required documents for distribution are not ready)***

#7 Meeting Notices

Sections 31.26 – 31.28

Notification:

- ▶ This proposed requirement will only layer yet another administrative burden upon Corporations which already have a short, 15-month window to hold their AGMs: by effectively doubling the notice period from 30 to 60 days, this provision may prevent Corporations from meeting their obligations in case they need to unexpectedly reschedule the AGM
- ▶ What happens if the Corporation is unable to meet quorum at the AGM? Does it have to start over and send another notice 60 days in advance of the rescheduled meeting?

#7 Meeting Notices

Sections 31.26 – 31.28

- **Agenda Items:**

- ▶ Requires Corporations to add any and all agenda items submitted by owners to the AGM agenda. This could open the floodgates for owners with personal agendas to disrupt and impede Corporation business at the AGM
- ▶ While we agree with the need to ensure owners have an opportunity to ensure legitimate Corporation items are included in the Agenda, the process has the legitimate possibility of unnecessarily extending meetings.

- ▶ **Recommendation:**

- ▶ 1) *The submission should be put in the form of a resolution so owners know in advance exactly what they are voting for.* Boards could create a template for agenda requests to assist owners.
- ▶ 2) *The discussion regarding any proposed agenda items only should only occur if they are approved and when the approved item is reached on the agenda.*

#10 Insurance Requirements

Sections 62.1 & 62.5

Section 62.1 - 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

- ▶ Current common practice that is now outlined in the legislation

#10 Insurance Requirements

Sections 62.1 & 62.5

Section 62.5 – Fidelity Bond

- ▶ NEW- Required to purchase bond that covers each director and manager against their malfeasance
- ▶ Provides formula for calculating amount
 - ▶ Reserve fund balance at start of fiscal year plus
 - ▶ The maximum balance of the operating account during the previous 12 months plus
 - ▶ The 3 largest monthly condominium contributions over the past fiscal year
- ▶ ***Recommendation to simplify formula***
 - ▶ ***Reserve fund balance at start of fiscal year plus***
 - ▶ ***Operating balance at start of fiscal year***

#11 Responsibility for Insurance

Sections 62.2 & 62.3

62.2 Corporation Insurance on Fixtures

- ▶ Clarifies to some extent what a fixture is and what an improvement is.
- ▶ Corporation required to insure fixtures that were originally installed by developer unless bylaws require additional coverage.

#11 Responsibility for Insurance

Sections 62.2 & 62.3

62.3 Repairs to Unit after Insured Loss

- ▶ Corporation required to repair or arrange for and supervise repairs to a unit after an insured loss if the Corporation is responsible for insuring the property
- ▶ Corporation is not required to repair property that they are not insuring (e.g. - unit improvements)
- ▶ Can assign responsibility by a bylaw, for repairs to a non-residential unit (e.g. - storage locker)
- ▶ If an Owner who is responsible to repair and fails to commence the work, the Corporation can, after reasonable notice given, do or arrange for the repairs to be done
- ▶ What is “reasonable notice” and how is the Corporation to fund this repair?

#11 Responsibility for Insurance

Sections 62.2 & 62.3

62.3 Repairs to Unit after Insured Loss

Comments:

- ▶ What is “reasonable notice” ? 30 days, 90 days, 6 months???
- ▶ If the Corporation wants to arrange for the repairs to be completed, how are they to fund this repair and/or recover their costs?
- ▶ The Regulation fails to address how repairs are to be handled if the cost of the repairs falls below the insurance deductible.
- ▶ Possible Solution- Have the repair treated as a maintenance item and the owner would be responsible for the repair. Excludes damages emanating from Common Property which would be the responsibility of the Corporation

#12 Insurance Deductible

Section 62.4

- ▶ **Good News** - they are addressing the deductible
- ▶ **Bad News** - can only recover if loss was due to “act or omission” (negligence)
- ▶ **Many claims are due to non negligence issues** - over flowing washing machine, leaking toilet, fridge line failure, dishwasher failure, actions of animals, actions of children - Based on the current wording, the Corporation would have to pay the deductible in these instances
- ▶ Homeowners are required to pay their policy deductible regardless of cause of loss, not sure why Condominium Unit Owners are different.
- ▶ Coverage is available on Unit Owners Policy and will pay on behalf of Unit Owner if Regulation or Bylaw is properly worded. A cap of a \$25,000 deductible that is charged to a Unit Owner is recommended. Corporation would be responsible for the remainder.

#14 Notifications

Sections 73.5 & 73.51

- **73.5 Electronic Notices, Notifications**

- ▶ Allows Corporations to send notices to Owners via email
- ▶ A Corporation should be *permitted* to do this, but not *required*
- ▶ There needs to be a requirement placed upon the Corporation to only send notices to an Owner via email if that Owner has expressly consented and authorized the Corporation to do so to a specific email address
- ▶ ***Remove the exemption for Corporations with less than 13 units (73.5(2))***

#14 Notifications

Sections 73.5 & 73.51

- **73.51 Notification of New Rule**

- ▶ Draft Regulation 73.51 sets out how a Corporation must inform owners and occupants about new Rules
- ▶ It places the onus upon the Corporation to ensure that any tenants in the complex are informed of the rules.
- ▶ *The Corporation should only have to inform the Owners: each Owner then should have the responsibility to inform their tenants about the Rule*
- ▶ Draft *Regulation 73.51(2)* is particularly troubling: it allows a Board to “establish a rule with immediate effect” in certain circumstances. *The Board should not allowed to establish a Rule that nobody knows about*

#15 Bylaw Violations

Sections 73.52 & 73.53

- **73.52 Consequences of Non-Compliance**

- ▶ Draft Regulation 73.52(2) requires the Corporation to service a notice of the violation which must provide certain details about the bylaw violation - this is a good thing and best practice for a Corporation to abide by
- ▶ 73.52(2)(i) only gives the offender *24 hours* after service of the notice of violation to remedy the situation - **is this long enough?**
- ▶ ***The draft Regulation should be amended to provide clarity about when the Board must pass a resolution approving the notice of sanction and/or imposing the sanction, if any.***

#15 Bylaw Violations

Sections 73.52 & 73.53

- **73.52 Consequences of Non-Compliance**

- ▶ Draft Regulation 73.52(6) is particularly troubling: it deals with Bylaw offenders who are not Owners (for example, tenants or guests of an Owner)
- ▶ *The Corporation's best remedy is against the Owner and the Corporation should only be required to serve the notice to the unit Owner*
- ▶ **NOTE** - s. 72(1) of the CPA allows the Corporation to serve the unit by posting a notice to the door

#15 Bylaw Violations

Sections 73.52 & 73.53

- **73.53 Maximum Monetary Sanctions**

- ▶ Several things to note here:
 - ▶ Residential units and commercial units are subject to different maximum sanctions (\$200-\$500 for residential vs. \$1,000-\$2,500 for commercial)
 - ▶ The maximum sanction for a single bylaw violation arising from the same event or series of events is \$10,000
- ▶ The intent here is likely to protect an Owner from a reckless Board that uses the Corporation's powers irresponsibly and unfairly
- ▶ *However, rather than narrowly restricting how a Corporation may sanction an owner for bylaw violations, a better approach would be to introduce provisions that hold individual Board members accountable for reckless and unfair practices*

#15 Bylaw Violations

Sections 73.52 & 73.53

- **73.53 Maximum Monetary Sanctions**

- ▶ *Maximum fines for sanctions imposed by Corporations should be determined by individual Corporations through their bylaws*
- ▶ These draft Regulations should only apply where a Corporation's bylaws are silent about monetary sanctions for bylaw violations
- ▶ *There should be no difference between residential, commercial and industrial unit sanctions*
- ▶ *Corporations should not be permitted to impose fines or sanctions for breach of a rule implemented by a Board - only bylaw violations should be sanctionable*
- ▶ *The limits of \$200 and \$500 (for residential units) are respectively too high and too low: there should be a greater span between the lower and upper sanction limits to adequately reflect a minor infraction (e.g. parking) vs. a major infraction (e.g. causing a fire).*
- ▶ 73.53(3) (which caps maximum fines to \$10,000) should apply to all Corporations, regardless of whether or not their own bylaws have monetary sanctions

Quick Hitters

- **#6 Voting Administration Sections 31.22 - 31.25**
 - ▶ *The draft Regulations fail to address how a “show of hands” vote is dealt with*
- **#17 Rental Deposits Sections 74.2 – 74.3**
 - ▶ This section does not address the situation where a person who is not an owner is residing in a unit but not paying rent (we typically see this in a situation where a parent owns the unit and the adult child lives in the unit)
 - ▶ *There should also be a provision allowing the Corporation to prescribe a rental amount in the event that there is no lease agreement in place*

#19 Additional Feedback

- **Are there other areas of the Regulation that were not addressed to your satisfaction?**
- **Please proceed to the microphone.**

Online Survey Guidelines

Survey Deadline is July 31, 2018

- ▶ Two questions are asked in each of the 18 sections
- ▶ **Do you support the changes related to (Topic Heading) on a scale of 1-5?**

Do Not Support 1 2 3 4 5 Strongly Support

- ▶ **Do you have concerns with the wording of the draft regulation related to (Topic Heading)?**

Yes

No

- ▶ You do not have to complete every section to submit.

Thank You's

- ▶ To Our Presenters
- ▶ To Our Sponsors
- ▶ To Our Volunteers
- ▶ To Our Attendees