

Condominium Legislation Across Canada

A Comparison

Part 1

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THERE IS quite a diversity of condominium legislation across Canada and it is evolving all the time. To date every province, the North West Territories and the Yukon have some form of condo legislation, and at least two of the provinces are in the process of revising their legislation.

With the condominium community across Canada growing so rapidly while becoming more and more interconnected, and with the National Association of Condominium Managers having just celebrated their first anniversary, it is timely to have a brief comparison of some of the basic aspects of condominium legislation across Canada. Given the amount that could be written on this topic, it was decided to write a two-part article. Part 1 will look at some of the definitions and concepts. Part 2 in an upcoming CM magazine will deal with specific issues such as lien rights.

photo: Dianne Werbicki

■ Declaration and Description

All provinces and territories, except Quebec and British Columbia, use the term “condominium corporation,” or “corporation,” for the legal entity. British Columbia uses the term “strata corporation” and in Quebec, the condominium corporation is referred to as a “syndicate,” or “syndicate of co-owners” (in French, “*syndicat des co-propriétaires*”). Nonetheless, the syndicate, like condominium corporations elsewhere in Canada, is considered a distinct legal entity.

As a general matter, in all Canadian jurisdictions a condominium corporation is created by the registration with the land registry office of the corporation’s declaration and legal description or plan; and of course the entity filing it is referred to as the Declarant. In Quebec the Declarant is referred to as the “Promoter.”

Alberta, British Columbia and Saskatchewan treat the declaration and description as a single document, referred to as the condominium “plan.” The term “declaration”

is not used in reference to the condominium plan.

■ Common Elements and Units

The concept of what constitutes “common elements” and “units” is essentially the same across Canada. All jurisdictions use the term “common elements” except Quebec where the term is “*parties communes*.” The term “units” is used throughout except British Columbia, which uses the term “strata lot” and Quebec “private portion.”

■ Bylaws

All jurisdictions provide for bylaws of the condominium corporation, which must be consistent with the legislation and with the condominium’s declaration; and what the bylaws may govern is essentially the same across Canada. Each jurisdiction sets out a procedure for the proper enactment or modification of a bylaw, but they are quite similar: must be passed by the board of directors, approved (with or without amendment) by

the owners and then registered on title. The percentage of owners required to approve a bylaw varies: in Ontario and Quebec it is at least 50%, Nova Scotia, 60%, Alberta, British Columbia and Manitoba, 75% and the rest of the jurisdictions, at least two-thirds.

■ Board of Directors

All jurisdictions provide that the corporation, as a separate legal entity, shall be managed by a board of directors. In British Columbia the board is referred to as the “council,” and the directors as “council members.” The responsibilities, and corresponding potential legal liabilities of directors is fundamentally the same in all jurisdictions.

In most jurisdictions the corporation’s initial board is appointed by the Declarant. Ontario, Quebec and Manitoba provide that once title to a sufficient number of units have been transferred (generally more than 50%) the owners must elect a new board. Other jurisdictions simply provide for a new board to be elected at an annual general meeting.

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Ontario is the only jurisdiction to have the “owner-occupied elected board position” (i.e., if at least 15% of the units are owner-occupied, then one position of the board can only be voted on by the owners of the owner-occupied units). This provision has unfortunately caused many headaches for condominium corporations with respect to proxies and voting procedure and in this writer’s view thankfully has not been adopted in other jurisdictions.

■ **Standard of Care/ Conduct of Directors**

Many provinces expressly set out the standard applied to the corporation’s directors in exercising the powers and discharging the duties of office. Alberta provides simply that a director must act honestly and in good faith. Ontario, New Brunswick, Nova Scotia and the new legislation in Newfoundland and Labrador add further that directors must also exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. British Columbia is similar, though it specifies that council members must act honestly and in good faith in the best interests of the corporation.

Finally, Quebec applies the same standard as that of the director of any corporation or other legal person: a director must act with prudence and diligence, honesty and loyalty in the best interest of the corporation.

■ **Rules**

Most jurisdictions expressly state that where the corporation’s bylaws so permit, the board may make rules respecting the use of the common elements for the purpose of preventing unreasonable interference with the use and enjoyment of the units and the common elements. New Brunswick’s legislation permits such rules regardless of the bylaws. The new, proposed legislation in Newfoundland and Labrador additionally requires that such rules be approved by owners holding at least two-thirds of the voting rights, the same as that required to approve a bylaw.

British Columbia allows the

council (aka board) to make rules governing the use, safety and condition of the common property and common assets. A majority of the owners must confirm the rule at the next annual general meeting for the rule to remain in effect.

In Ontario, the board’s rule-making power is set out in slightly broader terms. The board may make rules respecting the use of common elements and units to promote the safety, security or welfare of the owners and of the property and as-

sets of the corporation or to prevent unreasonable interference with the use and enjoyment of the common elements, the units or assets of the corporation. A rule takes effect 30 days after notice is given to the owners, unless within that period a request is made for an owners’ meeting. If a meeting is called then the owners must approve the rule for it to take effect.

Legislation in Alberta, Saskatchewan and Quebec, as well as the existing legislation in Newfoundland



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and Labrador, do not provide for rules as distinct from bylaws.

■ **Repair and Maintenance**

Most jurisdictions have broadly similar provisions concerning obligations of repair and maintenance. They all provide that the corporation shall repair and maintain the common elements. British Columbia, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, PEI, Yukon and the territories expressly permit the declaration (and in some cases the bylaws) to shift to the unit owners the repair or maintenance responsibility for some or all of the common elements.

Manitoba, Ontario, New Brunswick, Nova Scotia, PEI, and the territories provide that the corporation shall repair units after damage or failure, except where the declaration or bylaws provide otherwise. The new legislation in Newfoundland and Labrador provides that the corporation shall make such repairs in all cases. Notably, however, the corporation's duty to repair after damage in these jurisdictions excludes

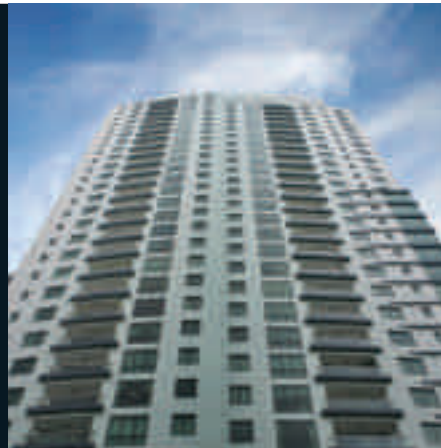
improvements to the unit. British Columbia permits the corporation, by bylaw, to assume responsibility for repairs to a strata lot.

British Columbia, Manitoba, Ontario, New Brunswick, Nova Scotia, Newfoundland and Labrador (in its new legislation only), PEI and the territories expressly state that the owners shall maintain their units. These same jurisdictions also state that where an owner fails to reasonably carry out the obligation to repair or maintain, the corporation may do the work at the owner's expense. Saskatchewan provides that a corporation may bring an action in debt to recover any sums expended for repairs to an owner's unit.

In the next article we will deal with such issues as enforcement, collection of common element fees, lien rights (or not), reserve funds, dispute resolution including the oppression remedy, and much more. So stay tuned. ■

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