

Adequate Reserve Fund — Defined!

By Sally Thompson, PEng

THE *Condominium Act* in Ontario has the following section on funding levels for Reserve Funds:



“94 Plan for future funding (8) Within 120 days of receiving a reserve

fund study, the board shall review it and propose a plan for the future funding of the reserve fund that the board determines will ensure that, within a prescribed period of time and in accordance with the prescribed requirements, the fund will be adequate for the purpose for which it was established.”

However, the Act does not define “adequate.”

The Association of Condominium Managers of Ontario and the Canadian Condominium Institute – Toronto and Area Chapter have recently prepared a joint legislative brief to the government with recommended changes to the *Condo-*

minium Act. As part of this work, a subcommittee has met to come up with a definition of “adequate” funding. A consensus has now been reached. While it is not yet in the *Condominium Act*, we expect that consistent adoption of the definition by industry will influence the government to incorporate the definition into the Act.

There have been two “camps” in the industry since 2001; the “inflation-matched” camp and the “no deficit” camp.

The “inflation-matched” believers argue that the intention of condominium Reserve Fund Planning is to fairly distribute the cost of repairing and replacing the common elements over past, current and future owners. Creating a funding program that is based on limiting annual contribution increases to no more than inflation achieves this goal.

The “no deficit” believers argue that without “adequate” defined, one must look at adequate per dictionary definitions, meaning “suf-

ficient” or “just enough” rather than “plenty.” In the extreme, this could mean that a corporation could simply contribute each year an amount equal to the planned expenditure in the coming year. While this is clearly not the intent of the Act, the lack of a definition for adequate does mean that this interpretation is not out of the realm of reason.

At the industry forum, which included many reserve fund providers, lawyers, auditors and property managers (see list below), the issue was argued at length. Key points were:

- Contributions should be spread as evenly as possible over all generations of owners over the service life of the building.
- Some phase-in is reasonable if the negative impact on future owners is determined to be minor when compared to the “margin of error” of the study and/or when the bulk of the spending is more than about 20 years away.
- It is not fair to current owners to implement a large increase in one step without giving them notice of the impending changes. Phasing-in over a number of years provides them (as well as potential unit purchasers) notice of the change.

The recommendation coming out of the forum is that section 94(8) be changed to the following:

“94 Plan for future funding (8) Within 120 days of receiving a reserve fund study, the board shall review it and propose a plan for the future funding of the reserve fund that the board determines will ensure that, within a prescribed period

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of time and in accordance with the prescribed requirements, the fund will be adequate for the purpose for which it was established. In this context, adequate means that the year-over-year per cent change in the total contribution for each year of the 45 year term of the study is no greater than the assumed inflation rate except in the first three years where an increase greater than inflation is permitted and that the closing balance in any year in the 45 year term of the study does not go below zero.”

Allowing a three year phase-in period with increases greater than inflation softens the blow of required increases, provides time for unit owners to accommodate the required increase (or choose to sell their unit), but also prevents corporations from running long phase-in periods which simply defer contributions unfairly to future owners. This would apply to all condominiums (built before or after 2001).

You might also have noticed that we are recommending that the cash flow analysis be extended to 45 years, compared to the current 30 years so

that longer service life elements are captured in the early studies.

While this notion of a three year phase-in period followed by inflation-matched increases is not yet law, by defining and communicating “industry-consensus,” ACMO and CCI presents this as guidance for Corporations to follow until such time that the Ontario Condominium Act incorporates a definition for “adequate.”

A second article I recently pre-

pared on Managing your Reserve Fund through HST Implementation is available in downloadable format on the ACMO website at www.acmo.org/. ■

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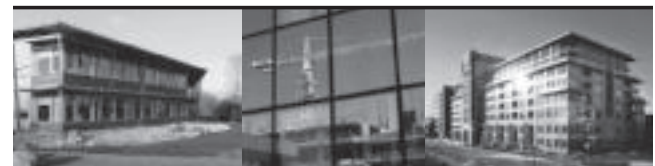
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