

Consumer Tips

April 2002

Buying & Owning a Condominium

Condominium Property Act

On September 1, 2000, changes to the *Condominium Property Act* and regulation came into effect in Alberta. The Act and regulation affect condominium owners, buyers, sellers and developers. This tipsheet will give you an overview of the key topics that affect buying and owning a condominium. It does not cover all the special circumstances or unique situations that can arise.

This tipsheet is not a substitute for legal advice. You may want to consult a lawyer who is familiar with condominium property law.

Tipsheet Contents

Page

General	
Act and regulation	2
What is a condominium	2
Condominium corporation/board	2
What you own, what you share	3
Your unit	3
Common Property	3
Unit factor	3
Exclusive-use common property	3
Regular condominium expenses	3
Taxes	3
Insurance	3
Condominium contributions (fees)	4
Estoppel certificate	4
Bylaws	4
Financing your condominium purchase	5
Questions to ask	5

Buying from a developer	5
Cancelling the purchase agreement	6
Purchase agreement	6
Phased development	6

Buying a previously-owned condominium	7
Before you buy, ask about the reserve fund	8

Condominium ownership	8
How condominiums are run	8
Voting rights	8
Board of directors	9
Board responsibilities	9
Your rights and responsibilities	9
Resolving disputes	10
Entering the unit	10
Renting units	11

Reserve funds	11
How much money should be in the reserve fund?	11
Previous reserve fund study	11
Who can do a reserve fund study?	11
Reserve fund report	12
Doors and windows	12
Owners' responsibilities	13
Board's responsibilities	14
What is in a reserve fund plan?	14
How is the reserve fund funded?	15
Updating the reserve fund study	15
Conversions, etc.	15

For more information	16
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The Act and regulation

The *Condominium Property Act* and regulation outline how condominiums operate and are managed in Alberta. The legislation covers:

- the powers and duties of the corporation and the rights of unit owners
- the division of responsibilities between the corporation and the unit owners
- budget and financial matters
- bylaws, including changing and enforcing bylaws
- reserve funds
- management agreements, renting units, and insurance
- requirements for annual general meetings and board meetings.

For complete information please read the Act and regulation which are available on the Alberta Government Services' Web site www.gov.ab.ca/gs or through the Queen's Printer Bookstore.

What is a condominium?

A condominium is a form of real property ownership. This type of property ownership has two parts: owning your own unit to which you get a title, and jointly owning property with other unit owners in the same complex.

Some examples of residential condominiums are an apartment within an apartment building, a duplex, a bungalow, or a townhouse.

Non residential condominiums may be commercial outlets, resorts/timeshares, bare land units, the interior of a building, or air space.

Personal relationships and interactions are very much a part of condominium ownership – perhaps more so than any other form of property ownership.

Every condominium corporation contains both **condominium units** and any **common property** identified in the condominium plan. A unit is the part of the property owned by the individual. The condominium plan identifies the

exact unit boundaries. The common property is everything in the condominium plan that is not within a unit. (See Common property pg. 3)

Condominium corporation/board of directors

The **condominium corporation** consists of the owners of all the units in the condominium plan. A corporation is created when the developer registers the condominium plan at a Land Titles Office.

The corporation is responsible for enforcing its bylaws, and controlling, managing and administering the common property. In this sense, the corporation is like a business and the board is like the board of directors of a business, responsible for its successful operation. An agent or employee of the corporation can act on behalf of the corporation.

Once you purchase a condominium unit, you are bound by the corporation's bylaws. Specific bylaws can give the corporation the right to impose sanctions, like fines, on owners who fail to comply with the rules. Bylaws vary greatly among condominiums. Some for example, may not allow children or pets to live in the complex. Make sure you know what bylaws govern the condominium you wish to purchase. (See Bylaws pg. 4)

A condominium corporation can sue for damages to the common property. It can also be sued regarding any matter connected to the parcel for which the owners are jointly liable.

The **board of directors**, elected by the owners, carries out the corporation's responsibilities on its behalf. The board reports to the owners at an annual general meeting or at an extra-ordinary general meeting. At the same time, the board is responsible for actions that can affect the owners' property values. (See Board of directors pg. 9)

What you own, what you share

Owning a condominium is not the same as renting an apartment where all the duties and responsibilities of running the building are handled by the building owner and caretaker. In a condominium complex, ownership responsibilities belong to you and all the other unit owners in your condominium corporation. **Before** you make an offer to purchase, be sure you understand what is included in the unit and what is considered common property. This information is contained in the condominium plan.

Your unit

When you buy a condominium unit, you acquire title to a space that is often bounded by walls, floors and ceilings. In a bare land unit, you buy the actual land and anything built on it.

You are responsible for the maintenance, repair, and remodeling of the interior of your unit. Ask if the board must approve your remodeling plans. If the common property or the building structure is affected, the board will need to approve the changes before you make them. Ask for permission in writing and keep a copy of the board's written approval.

Common Property

The common property is identified in the condominium plan. It usually includes space and facilities outside the units, such as hallways, elevators, heating and electrical systems, laundry rooms, recreation rooms and landscaped areas. As the owner of a unit, you also become the partial owner of the condominium's common property. In the case of a bare land condominium this would include such things as roads. You agree to share the expense and responsibility for the repair and maintenance of this property with other unit owners. Your share of the costs is determined by your unit factor.

Unit factor

The unit factor identifies your portion of the joint ownership of the common property. The developer assigns a unit factor to every

condominium unit when registering the condominium plan. The sum total of the unit factors for all the units in the plan is 10,000. As of September 1, 2000, developers must disclose the basis for setting the unit factor. It is important to know the unit factor assigned to your unit because it will affect your condominium contributions and your voting rights.

Exclusive-use common property

You may also lease or have the right to use defined areas of the common property called exclusive-use areas (private access and use), for example, the carport, parking stall or balcony next to the unit. These areas may be identified on the condominium plan or defined in the corporation's bylaws. The corporation retains the control of these areas.

Check the bylaws to see what exclusive-use areas you can use and what your responsibilities are for those areas, such as maintenance. Ask if you are entitled to the exclusive use of these areas or if the area is shared with the other unit owners. What improvements would you be allowed to make? If you have any questions, check with the board, manager, or developer before you buy.

Regular condominium expenses

Taxes

You will pay municipal taxes on your condominium unit. The current taxes should be noted in the purchase documents. It's a good idea to double check with the municipal government to confirm the taxes.

Insurance

Insurance on the entire structure of the condominium development is the responsibility of the condominium corporation. (This is not always the case for bare land complexes.) The corporation must have replacement cost value insurance on the property for all perils covered by standard insurance policies. Check the policy for exclusions. There must also be insurance for any liability incurred by the board

or corporation when carrying out their duties and responsibilities.

You will need to buy your own insurance to cover your personal property, personal liability, and perhaps any improvements made to your unit. Check the bylaws to see if improvements are covered under the corporation's policy. Ask your agent or broker for more information. The condominium corporation can give you a certificate of insurance that provides your agent or broker with information about the extent of the corporation's insurance policy.

Condominium contributions (fees)

As a condominium owner you'll pay a yearly or a monthly condominium contribution often referred to as a condominium fee. A condominium corporation needs money to meet its financial obligations – paying for insurance premiums, snow removal, grass cutting, repairs to common property, reserve fund, etc. The main source of income for a condominium corporation is the money paid by the owners in their condominium contributions.

The board sets contributions by taking into consideration the budgeted needs of the corporation and the unit factors (for each unit). Corporations can now change the formula for allocating condominium contributions, if the owners pass a special resolution to amend the bylaws. Make sure you know how your condominium contributions are calculated. Most condominium contributions are paid monthly. Be aware that condominium contributions can and do go up!

If the corporation does not have enough money in the reserve fund to cover significant repairs or incurs other large unexpected expenses, the board may require each condominium owner to pay a special assessment to cover the costs. However, the requirement for condominiums to do a reserve fund study and to develop a reserve fund plan should significantly reduce the need for special assessments for repairs and maintenance. (see Reserve funds pg. 11)

A condominium corporation has new powers to collect unpaid condominium contributions. It can:

- ask the owner's mortgage company to pay the outstanding amounts and add it to the owner's mortgage;
- require an owner's tenant to pay the monthly rent to the corporation to cover the unpaid condominium contributions;
- file a caveat against the title to the unit at the owner's expense;
- charge interest, up to 18% per year on outstanding amounts;
- sue the owner for all outstanding contributions, interest and its full legal fees; and
- foreclose on the title to the unit.

Estoppel certificate

Before you buy a previously-owned condominium unit, get an estoppel certificate from the corporation. You may have to pay a fee for obtaining the certificate. The estoppel certificate tells you:

- the amount of contributions assessed to that unit;
- whether the contribution is to be paid monthly, yearly, etc.;
- whether the previous owner has paid his/her share of the contributions and what remains unpaid; and
- the amount of any interest owing on any unpaid condominium contributions.

Your lawyer can deduct any unpaid contributions from the purchase price.

Bylaws

Every condominium has a set of bylaws. When a condominium plan is registered, it may include the initial set of bylaws that govern the corporation. If not, the bylaws found in Appendix 1 of the *Condominium Property Act* apply until replaced. If the condominium was built before May 16, 1978, the corporation would be regulated by the bylaws found in Appendix 2 of the Act until replaced.

Owners can change the bylaws to suit their particular community by passing a motion to adopt the changes. A special resolution, requiring the approval of 75% of the owners named on the unit titles and representing not less than 7,500 unit factors is required to make any changes to the bylaws. Changes are effective after the board registers the changes at a Land Titles Office.

All owners, and everyone occupying a unit, are bound by the bylaws of the corporation. If there is a conflict between the bylaws and the *Condominium Property Act*, the Act applies. The Act and specific bylaws give the corporation the right to impose sanctions, like fines, on owners who fail to comply with the bylaws.

Financing your condominium purchase

A condominium unit is financed the same way you would finance any other property purchase. You'll probably get a mortgage through a financial institution and make a monthly payment of principal and interest.

If you are buying a new condominium from a developer, you need to find out if there is a "blanket mortgage" on the development. Seek legal advice for a complete explanation of a blanket mortgage and how it might affect you as an owner.

Questions to ask!

Be sure you know the answers to these questions before you buy:

- What is the development's history? For example, are there any persistent problems with the plumbing or other utilities?
- If you are buying from a developer, what work remains to be done on the condominium development? Does your purchase agreement identify a completion date?
- Is there an operating surplus or deficit?
- What is the current financial status of the corporation? Ask for a copy of the year-end financial statement, the current financial

statement, the current budget, and evidence of adequate insurance coverage.

- Does the common property appear to be well maintained and managed?
- Have any transactions taken place affecting the common property such as transfers, leases or re-division of the units?
- Do the unit owners own the recreational facilities as part of the common property, or does the condominium corporation lease them? If they are owned, are they used by anyone besides the unit owners? If they are leased, what are the terms?
- How many of the units are unoccupied? Rented?
- Are you personally responsible for any maintenance duties?
- Are there any restrictions in the bylaws governing your use of your unit? Can you have pets? Is there an age restriction on occupants in the complex? Can you operate your home-based business from your unit? Can you put up your satellite dish? Can you put in a hot tub? Read the bylaws carefully.
- Are there extra parking stalls for owners? Is there enough visitor parking? Are there restrictions on visitor or owner parking? Can you park your motor home somewhere?

Talk to the people who own condominium units in the complex you are considering. Speak to a director and the manager. They can give you good information about owning a unit in the complex and about the governance of the condominium corporation.

Buying from a developer

The developer has a duty to deal fairly with you when entering into, performing and enforcing the purchase agreement. Before you buy, the developer must provide you with a copy of:

- the purchase agreement;
- the bylaws or proposed bylaws;
- any management agreement or proposed management agreement;
- any recreational agreement or proposed recreational agreement;

- the lease, if the land on which the unit is located is leased;
- any mortgage or proposed mortgage that may affect the title of the unit;
- the condominium plan or proposed condominium plan;
- the phased development disclosure statement if the unit is in a phased development.
- reserve fund information if the development is a conversion (see pg. 15)

Before you move in, the developer must also provide an occupancy permit.

If you want to cancel your purchase agreement

If you are buying a new unit from a developer, the *Condominium Property Act* allows you to cancel your purchase agreement within 10 days from the date you signed it, if you did not receive all the required documents at least 10 days before you signed the contract. You are entitled to a full refund within 10 days after the developer has received your written notice to cancel.

Purchase agreement

The purchase agreement must include the condominium plan showing the:

- interior finishing of all common property within the building, and all major improvements
- recreational facilities and other special features
- maintenance equipment for common property.

The purchase agreement must also include:

- the unit factor and how it was set
- the condominium contributions for the unit (or an estimate) based on a reasonable economic basis
- notification of the right to cancel on the front or first page of the document.

Ask about any other questions you have regarding the development and what the developer is offering.

The *Condominium Property Act* says that when you purchase a unit in a condominium complex not yet completed, the developer has certain responsibilities. The developer must hold your funds in trust until construction of the unit and common property is substantially completed. You must receive your title before the money is taken out of the trust fund. It is important to consult your lawyer before you sign the purchase agreement.

If the development is covered by an approved purchaser's protection program, other rules may apply. Examples of these programs are the Alberta New Home Warranty Program and the National Home Warranty Programs. For more information contact the warranty program provider. (See For more information on pg. 16.)

Information about phased development

Sometimes condominiums are developed in phases. If you are buying a unit that is in a phased project you should obtain a copy of the phased development disclosure statement that is registered as part of the condominium plan. Some of the information included in the disclosure statement would be:

- a statement that the building or land is to be developed in phases
- the maximum and minimum number of units in the entire project
- a description of the units and common property included in the initial phase and subsequent phases
- a description of the proposed physical appearance of each phase and its compatibility with other phases
- the extent to which the developer will contribute to the common expenses during the development of each phase and the entire project
- the method to determine the allocation of administrative costs in each phase and for the entire project
- the basis for allocating unit factors
- the effect on the owners' contributions for administrative expenses and the

- corporation's budget if future phases are not completed.

If you bought a unit that is in a phased project you should keep a copy of the phased development disclosure statement that was registered as part of the condominium plan. The developer cannot change the phased disclosure statement without the consent of 2/3 of the owners who are entitled to vote under the Act. However developers can make changes necessary to meet zoning and municipal development requirements.

If the developer cannot or will not complete the project, the developer, the corporation, the owners or other interested parties can ask the court to make any number of orders allowed under the regulations to deal with the land and the expected improvements to the common property.

Buying a previously-owned condominium

When you buy a previously owned condominium, you are not protected by the disclosure and trust provisions of the *Condominium Property Act*. It is up to you to get the necessary documents and information. You may want to seek legal advice.

When you buy your condominium from the owner of the unit, you should obtain and examine the following documents **before** you make your offer to purchase.

- the condominium plan
- the condominium plan additional document sheet
- the certificate of title for the unit
- information about any restrictive covenants
- the condominium bylaws
- the phased development disclosure statement, if any. (See Phased development pg. 6)

The seller, a Land Titles Office, a registry agent, the real estate agent, the condominium board or manager, or your lawyer may be able to help you obtain the documents.

Alternatively, you could make your offer to purchase subject to obtaining the documents and the purchaser being satisfied with their contents.

You will need to know the condominium plan number (letters and /or numbers) to obtain these documents from a registry agent. Plans registered after 1975 have a seven-digit number. Those registered before 1975 have a combination of letters and numbers. They may also have names such as "Whispering Pines".

The condominium corporation must provide you with the following information within 10 days of your written request. The corporation may charge a reasonable fee for these materials.

- an estoppel certificate (See Estoppel certificate pg. 4)
- any governing policies of the condominium
- the particulars of any legal action or claim against the corporation
- details of any written demand made upon the corporation for \$5,000 or more
- a copy of the corporation's current budget
- a copy of the most recent financial statement and year-end statement
- a copy of the latest minutes of general meetings of the corporation and of the board
- details of any management, recreational and lease agreements
- a copy of the approved reserve fund plan and annual report, including a statement identifying the amount of the capital reserve fund (See Reserve funds pg. 11)
- a statement setting forth the unit factors and the criteria used to determine the unit factor (See Unit factor pg. 3)
- the particulars of any post tensioned cables that are located on the property
- information on any structural deficiencies that the corporation has knowledge of at the time of the request in any of the buildings on the condominium plan
- a copy of the corporation's certificate of insurance, showing the amount of

insurance on the complex (See Insurance pg. 3)

- 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. (See Exclusive-use common property pg. 3)

As with the purchase of any building, it would be wise to have a building-inspection report on the unit, if available, or to make your offer to purchase conditional on obtaining a satisfactory report.

Finally, make sure you also ask for:

- the corporation's most recent newsletter
- the names of the corporation's current board of directors and manager, if any, along with contact numbers.

Before you buy, ask about the reserve fund

- Is there a reserve fund?
- How much money is in the reserve fund?
- How much of the condominium contribution goes to the reserve fund?
- Has a reserve fund study been done, and if so, when?
- What major expenses, if any, are being considered in the reserve fund plan?
- How much money will be needed to establish and or maintain the fund to offset future replacement costs?
- How does the board plan to raise those funds – increased condominium contributions, special assessments etc?

Ask for a copy of the reserve fund plan and the annual report. If you wish you can also ask for a copy of the reserve fund study report (you may have to pay a fee to obtain the documents). (See Reserve funds for conversions, etc. pg. 15)

As buildings age they need to be repaired and maintained. This also applies to other common property such as the exterior of the building, asphalt, underground utilities or services and landscaping. As with all other expenses of the

corporation, the owners must pay for the repair or replacement costs.

By September 1, 2002, all condominium corporations registered before September 1, 2000 must have completed a reserve fund study and approve a reserve fund plan to establish and maintain a reserve fund. Condominiums developed after September 1, 2000, have two years from the time they are completed to do a reserve fund study and approve a plan. Reserve fund studies must be conducted every 5 years.

Condominium ownership

When you buy a condominium you are buying a certain lifestyle. You may not have the responsibility for shoveling the snow or maintaining the property but you do have responsibilities as an owner who is part of the community. You need to know how condominiums are run, your responsibilities as an owner, and the responsibilities of the board of directors.

How condominiums are run **Voting rights**

As an owner of a unit you have the right and obligation to vote. Your voting rights are determined by the Act, bylaws and by the unit factor for your condominium unit.

At most general meetings, votes are conducted by a show of hands. The bylaws clarify who has the right to vote if more than one person owns the unit.

All bylaws permit owners to ask for poll votes at meetings. In a poll vote the person's share of the unit factor assigned to the unit determines the weight of that owner's vote.

You may exercise your right to vote personally or by proxy. If you have a mortgage, the first mortgagee may have the right to vote in your place if it gives the corporation written notice of the mortgage.

If you owe money to the corporation for 30 days or more before a vote, you lose your right to vote.

Owners can vote on matters presented at any general meeting and on bylaw changes, changes to the common property and other matters permitted under the Act, regulation and the bylaws. However, owners do not get to vote on all decisions affecting the condominium corporation. The board of directors, elected by the owners, makes most of the decisions on the running of the corporation. Therefore, an owner's most important votes are those electing the board of directors and those changing the bylaws.

Board of directors

Every condominium corporation has a board of directors elected by the owners. The bylaws outline how many directors sit on the board, how often they are elected, and if there are any eligibility requirements. Directors are volunteers who have agreed to take on the responsibility of running the condominium for at least one term. Two thirds of the members of the board must be unit owners or mortgagees, unless otherwise stated in the bylaws. The board conducts its business by holding regular meetings, usually monthly.

Each director has the responsibility to act honestly and in good faith in exercising the power and in discharging the duties of the board. Every director must declare any conflict of interest and not vote on matters that may involve a conflict.

The board is responsible for:

- abiding by and enforcing the Act, regulation and corporation's bylaws
- managing, administering and maintaining the common property
- setting and collecting condominium contributions and dealing with the financial administration of the corporation (financial statements must be prepared according to generally accepted accounting practices.)

- preparing and approving an annual operating budget and reserve fund budget and providing those budgets to the owners before the annual general meeting
- placing and maintaining insurance on the property for perils covered by standard insurance policies or any other perils identified in the bylaws and the regulation
- placing and maintaining liability insurance for the board or corporation with respect to carrying out their duties and responsibilities
- establishing, maintaining and administering the capital reserve fund and preparing and distributing an annual report on the reserve fund to the owners
- conducting a reserve fund study every 5 years and preparing a reserve fund plan
- hiring and supervising employees, contractors and any condominium manager or management company
- reviewing and updating the bylaws and, with proper notice, presenting the changes to the owners for approval
- holding an annual general meeting and reporting on their stewardship of the corporation
- responding, within 10 days, to an owner's written request for information on contributions due and payable, copies of agreements, bylaws, minutes of the board or general meetings, budget, recent financial statements, insurance, and the reserve fund study report or plan or annual update (if available), as required under the Act and the regulation. The board may charge a reasonable fee for these documents.

Your Rights and Responsibilities

As a unit owner, your rights and responsibilities include:

- the right and responsibility to vote in matters presented to the owners for vote
- the right of access to common areas, subject to the bylaws
- the right to obtain information on the management or administration of the corporation

- the responsibility to inform yourself about the Act, the regulation, the bylaws, the policies and the governance of the condominium corporation
- the responsibility to abide by the Act, the regulation, the bylaws, the policies, and to have your family, tenants and guests do so
- the responsibility to participate in governing the condominium corporation – meaning to attend general meetings, and serve on the board or on a committee
- the responsibility to maintain your own unit and any exclusive use common property
- the responsibility to obtain insurance on your unit and your own belongings
- the responsibility to pay all condominium contributions and assessments on time
- the right to use mediation, arbitration or court action to resolve disputes with the corporation, the board or other owners
- the right to legally challenge improper conduct of a developer, condominium corporation, employee of a corporation, director or other owner.

Every owner should have a copy of the condominium plan, the bylaws, the Act and regulation. Owners can get a copy of the condominium plan and bylaws from a registry agent (See For more information pg. 16). You will need to know the condominium plan number (letters and/or numbers) to obtain these documents.

Plans registered after 1975 have a seven-digit number. Those registered before 1975 have a combination of letters and numbers. The condominium may also have a name, such as "Whispering Pines". In addition, you should get the names of the directors and contact numbers for the directors or the condominium manager, if there is one.

Read the corporation's newsletter, the minutes of the general meetings and board meetings, the budget and financial statements. Attend the meetings. Express your views. Vote. Put any complaints or concerns in writing to the board so it can follow up. Become a part of the

community of the condominium complex in which you own a unit.

Resolving disputes

Be aware that the government can't become involved in disputes between condominium owners, boards or developers. If you have a dispute with the developer or anyone in the complex, speak directly with the person involved to try and resolve the problem. If the conflict involves the bylaws, the Act, the regulation or the corporation put your complaint in writing to the board of directors. If the matter is not resolved you have to get legal advice.

Condominium disputes can now be resolved using mediation and/or arbitration, as an alternative to court action. These processes involve using an objective third party. A mediator helps the parties negotiate their own resolution to the problem. An arbitrator makes a decision after all the parties present their cases.

All those involved need to agree on the process and on a mediator or arbitrator. If they cannot agree on a mediator or arbitrator, the Alberta Arbitration and Mediation Society can appoint one for them. The parties involved pay the costs of the dispute resolution.

If an owner or any person who has a registered interest in a unit believes there has been improper conduct by the developer, a corporation, an employee of a corporation, director or owner, they apply to the court to resolve the problem (Section 67(1) of the Act). An example of improper conduct is non-compliance with the Act, regulation or the bylaws.

Entering the unit

No one may enter your unit without your consent or without giving proper notice unless there is an emergency regarding the provision of water, power, and heat or any other service that would affect other owners. If there is no emergency, you must be given at least 24 hours' notice before someone enters your unit

to repair the problem. The notice must be in writing, state the reason for entry and set a date and time for entry. The hours for entry are between 8 a.m. and 8 p.m.

Renting units

If you want to rent your unit to someone else, you must inform the corporation in writing of your intent, your future address, and the amount of the monthly rent. You must tell the corporation in writing your tenant's name within 20 days after the tenancy starts.

The corporation may require that you pay a deposit that could be used to repair or replace common property damaged by your tenant. The amount of the deposit cannot be more than one month's rent.

If you do not pay your condominium contributions, the corporation can direct the tenant to pay all or part of the rent to the corporation to cover your unpaid condominium contributions.

The tenant is bound by the bylaws of the corporation. If your tenant contravenes the bylaws or damages the common property or the corporation's property, the corporation can ask you to evict the tenant. It can also give the tenant and you the notice directly.

The *Residential Tenancies Act* may affect you and your tenant if you are renting a residential unit (see the Information for Landlords and Tenants tipsheet). If there is a conflict between the *Residential Tenancies Act* and the *Condominium Property Act*, the *Condominium Property Act* applies.

Reserve funds

Every condominium corporation in Alberta must have a reserve fund. The reserve fund is money set aside to repair and replace the common property and any real or personal property owned by the condominium corporation, where the repair or replacement does not occur annually.

How much money should be in the reserve fund?

Each condominium corporation will have a different amount in its reserve fund. Each corporation determines how much money it should have in the reserve fund by completing a *reserve fund study*. By September 1, 2002, every condominium corporation must conduct a reserve fund study to determine how to fund the reserve fund. The reserve fund study is prepared for use by the condominium board, owners and buyers and it will not be reviewed by the government.

Can a corporation rely on its previous reserve fund study?

Corporations who have done a reserve fund study in the last five years can rely on that study, providing it meets the new legislative requirements. Corporations who have done a previous study must prepare and adopt their reserve fund plan, and provide the plan to the owners by September 1, 2002.

Who can do a reserve fund study?

Only a "qualified person" can do the reserve fund study. A qualified person is a person or business corporation who employs a qualified person, who based on reasonable and objective criteria, is knowledgeable about three things:

- depreciating property,
- the operation and maintenance of that property, and
- the costs of replacements or repairs to that property.

The qualified person has to disclose his/her qualifications and whether the person is an employee, agent or associate with the condominium corporation, its manager or maintenance provider.

The board should tender for a reserve fund study, the same as it would tender for any other contract. When seeking out a qualified person, a responsible board should:

- ask about the person's qualifications
- ask for proof of liability insurance

- ask for references, and check the references
- examine one of the person's other reserve fund study reports to see if it meets the corporation's needs and is understandable
- ask what follow-up assistance the person will provide
- interview the person
- ask about fees and any additional costs
- ask about timelines for completing the study and report
- choose the qualified person who best meets all the requirements of the corporation.

In condominium corporations with 12 or less units, the owners have a choice on how to conduct a reserve fund study. They may hire a qualified person or they may vote (by special resolution) to let the corporation be its own "qualified person" (meaning, the owners can do the study themselves).

Condominium corporations who choose to let the corporation be its own qualified person must meet all the criteria and guidelines for the report and plan. If the owners do not pass a special resolution, the corporation must hire a qualified person to complete the reserve fund study and report.

What is included in the reserve fund study report?

The qualified person must, complete the reserve fund study and prepare a report for the common property and other property owned by the corporation to:

- identify what property may need to be repaired or replaced within the next 25 years (create an inventory)
- assess the present condition of the property and estimate when the property will need to be replaced or repaired
- estimate the costs of repair or replacement of the property, at a cost no less than current costs

- identify the life expectancy of the component when it is repaired or replaced
- identify the current level of funds in the reserve fund, if any
- recommend the amount of money, if any, that should be included in or added to the reserve fund
- describe the basis for determining the current level of funds and recommend the amount of money required.

Doors and windows

Conventional Units

A condominium plan for a conventional development may state that the doors and windows on the exterior walls are part of the unit. If the condominium plan states that the doors and windows are common property then the corporation is responsible for repairing and replacing them, just as it would be any other common property. The reserve fund must then contain sufficient funds to repair or replace the doors and windows as required.

However, in many instances the condominium plan is silent with respect to doors and windows. Prior to the amendments to the Act, if the plan was silent, the doors and windows on the exterior boundaries of the unit were part of the unit. Now, under the amended Act, if the plan is silent, those doors and windows are common property, which the corporation must repair and maintain.

If the plan does not specify whether the doors and windows are either part of the unit or part of the common property, and the corporation wants to continue under the old regime where they were part of the unit (therefore the unit owner's responsibility to repair and maintain), the corporation may by special resolution vote to change the condominium plan so that the doors and windows again become the unit owners' responsibilities. Until September 1, 2002, the special resolution becomes effective when it is registered at a Land Titles Office. After September 1, 2002 the corporation will also require the approval of the court before the change will become effective.

When voting, owners should keep in mind that it is the owners, directly or through their condominium contributions, who will pay for the repair and replacement of doors and windows. The condominium corporation will be able to:

- obtain cost savings because of bulk purchases;
- raise the money over time, creating less hardship for the owner;
- negotiate and follow up with warranties and guarantees around the product quality and installation;
- monitor the installation or repair to make sure it does not negatively affect the rest of the common property; and
- consider things like the integrity of the building envelope, the affect on building security, heating systems and costs.

The condominium corporation can oversee all the above regardless of any changes in ownership of the unit. If the owner is responsible, that owner may not have the funds on hand when required and may not be able to get the same price breaks. The owner, and future owners of that unit, will be responsible for any warranties and guarantees and will be responsible for any damage caused to the common property by the installation or repair, or by the owner's delay in completing the work.

If the condominium corporation is responsible for the doors and windows, it decides, based on advice from the reserve fund study report, when the repair or replacement will be done. Responsible boards should not unnecessarily create this cost, but the board's decision on proper timing may differ from that of an owner. When considering the time to replace or repair a door or window, the board must consider not only the immediate cost, but also the potential for increased damage to other common property and the potential cost if the repair or replacement is delayed. If the owner is responsible, the condominium corporation, under the bylaws, may also be able to require an owner to make repairs if the faulty door or

window is causing damage to other common property, such as the wall or insulation.

Where the doors and windows form part of the common property, they will become part of the inventory in the reserve fund study. The reserve fund will have to contain sufficient funds to cover repair and replacement as required according to the reserve fund study report.

The legislation gives the condominium corporation some flexibility if some owners have already replaced their doors and windows and the owners do not wish to now change the condominium plan. Owners can, by special resolution, pass a bylaw to change the way condominium contributions are assessed, by using a different basis than "unit factors." This gives flexibility to the condominium corporation to temporarily assess a more equitable condominium contribution to those unit owners who have already repaired or replaced their doors or windows at their own expense.

Bare land Units

In a bare land condominium, the exterior walls, the roof, the foundation, driveway and at least part of the landscaping are usually inside the unit boundaries, so are part of the unit and must be repaired and maintained by the individual unit owner. However, the exterior repair and maintenance obligations of the individual bare land unit owners may be transferred to the condominium corporation through the registration of properly worded bylaws. If a bare land condominium corporation is not required or authorized by its bylaws to repair and maintain the doors and windows, funds for their repair and maintenance should not be calculated into the reserve fund requirements.

What are the owners' responsibilities?

The owners elect the board to carry out the business of the condominium corporation, including the statutory requirements around reserve funds. The Act gives the board the power to make decisions around the reserve

fund. Although a responsible board will provide information to and obtain input from the owners, it need not consult the owners before making decisions on the reserve fund. Owners can assist the board in its role by:

- electing directors in whom they have confidence to run the corporation
- remembering that in most cases directors are also owners and will be affected by decisions the same as other owners
- keeping the board aware of circumstances in the condominium community which might affect funding decisions
- attending information sessions, reading information provided by the board, and providing feedback to the board when requested
- accepting that directors must make their own decisions in the best interests of the entire corporation and all the owners, which will sometimes conflict with what individual owners might do.

What are the board's responsibilities?

The board has the sole responsibility and authority to hire the qualified person and prepare and adopt a reserve fund plan after it receives the reserve fund report. The board must:

- by September 1, 2002 or within two years from the corporation's creation after September 1, 2000 (and then again every five years),
 - ✓ engage a qualified person to conduct a reserve fund study,
 - ✓ receive a reserve fund report from the qualified person,
 - ✓ prepare and adopt a reserve fund plan, and
 - ✓ provide a copy of the approved reserve fund plan to the owners before implementing the plan.
- maintain the reserve fund at an appropriate level so that the corporation can meet the statutory requirements;
- maintain the reserve fund in a separate trust bank account and not

combine the funds with other corporation funds except when bills are paid under the reserve fund plan, and ensure all managers or other persons handling the corporation money do the same;

- prepare and provide to the owners, before or at the time of giving notice of every annual general meeting, an annual report on the reserve fund; including the opening balance, money in and out, where the income came from, what money was spent during the year, and the list of property repaired or replaced and the costs incurred for the repair or replacement;
- when a request by owners, purchasers or mortgagees is received in writing, the corporation must provide the specifically requested document(s) within 10 days, (you may have to pay a fee to obtain the documents) for
 - ✓ the most recent reserve fund study report, and/or
 - ✓ the most recent reserve fund plan, and/or
 - ✓ the most recent reserve fund annual report; and
- not use the reserve fund for "improvements" unless the owners vote by special resolution to allow it. Improvements are normally changes, enhancements, alterations or additions to the common property or property owned by the Corporation which are not listed in the reserve fund study report.

What is included in a reserve fund plan?

The board must prepare and approve a reserve fund plan, decide what work to do and how to fund the costs. This document tells the owners what the board has decided to do to create and maintain the reserve fund and to carry out the repair and replacement work as required. The reserve fund plan identifies how and when the reserve fund will be established, if it does not already exist, and how and in what amounts money will be collected to fund

and maintain the reserve fund. It will identify what work will be done and in what order. The plan must be based on the reserve fund report and show that sufficient funds will be available, from the owners' contributions or other reasonable methods, to repair or replace the property according to the reserve fund report. A reserve fund plan will normally cover a five-year period, but may be updated by the board each year.

How is the reserve fund funded?

Corporations may meet their funding requirements by:

- increasing condominium contributions (permanently or for a set period),
- levying special assessments (immediately or in the future),
- borrowing money, or
- using any combination of these.

This gives the corporation maximum flexibility as to how and when to deal with repair and replacement costs, while at the same time enabling it to deal with any potential surprises and undue hardship for owners. When Corporations implement their reserve fund plans, adequate funding must be maintained in the reserve fund.

A responsible board will:

1. consider the needs and costs identified in the reserve fund study report. If the financial recommendations in the reserve fund study report are not feasible or practical for that corporation, the board should discuss alternatives with the qualified person or consider obtaining a new reserve fund study and report.
2. consider the priorities for repair and replacement and what maintenance can be done to extend the life of any of those components.
3. investigate and consider the funding alternatives to raise the money.
4. consider the practical realities, for themselves and the other owners, of these funding alternatives. Will one alternative cause more hardship and community

disruption than another? Is there a strong reason to choose one alternative over the other? Perhaps the board could discuss alternatives with the owners at an information meeting before making the final decision. Good community relations suggest the owners should not be surprised by the board's final decision.

5. make the decision on which funding method to implement, and
6. adopt the entire reserve fund plan and send a copy to the owners.

When is the reserve fund study updated?

Every five years, condominium corporations must hire a qualified person to conduct a new reserve fund study, receive a reserve fund report, prepare and adopt a reserve fund plan, and present the reserve fund plan to the owners for their information before implementing it. Future reserve fund studies done by the original qualified person will likely be less expensive than the cost of the original study. If circumstances require it, a corporation could complete a limited update of its reserve fund study during the five years, normally by asking the original provider to complete the limited update.

What about conversions, previous rental buildings and new condominium corporations?

Residential condominium conversions must have a reserve fund study, reserve fund study report and a reserve fund plan in place before the developer sells the first unit. Purchasers are entitled to inspect the reserve fund report and the reserve fund plan.

If all the condominium units are owned by one owner or a group of owners, and are used as a rental property, the condominium corporation need not have a reserve fund. However, if the owners decide to sell any of the units, the condominium corporation must complete the reserve fund study, reserve fund study report and a reserve fund plan before any unit is sold.

All new condominium corporations have two years from the date of registration of the condominium plan to complete the reserve fund study, reserve fund study report and reserve fund plan.

For more information

Alberta Government Services

Consumer Services Branch

Edmonton: (780) 427-4088

Toll free in Alberta: 1-877-427-4088

www.gov.ab.ca/gs

- Tipsheet: Information for Landlords and Tenants

Registry Agents

Look under Licence & Registry Services in the commercial pages of the telephone book.

Edmonton: (780) 427-7013

Toll free in Alberta: 310-0000 and follow the instructions.

Web site: www.gov.ab.ca/gs click on Registry Agent Network

Canadian Condominium Institute, North Alberta

(780) 413-8334

www.cci-north.ab.ca

Canadian Condominium Institute, South Alberta

(403) 253-9082

www.cci-south.ab.ca

Canada Mortgage and Housing Corporation

1-800-668-2642 www.cmhc-schl.gc.ca

- Home Buying Step by Step (booklet)

Alberta New Home Warranty Program

1-800-352-8240 www.anhwp.com

National Home Warranty Programs

1-800-472-9784

www.nationalhomewarranty.com

Alberta Home Builder's Association

(780) 424-5890 1-800-661-3348

www.alberta-homes.com

Real Estate Council of Alberta

1-888-425-2754 www.reca.ab.ca

Alberta Arbitration and Mediation Society

(780) 433-4881 www.aams.ab.ca

You can order a copy of the *Condominium Property Act* and regulations from the Queen's Printer Bookstore

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Phone: (403) 297-6251 Fax: (403) 297-8450	Phone: (780) 427-4952 Fax: (780) 452-0668

or from the Web site at www.qp.gov.ab.ca

A current version of this document is available on the Alberta Government Services' Web site at www.gov.ab.ca/gs

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