

2nd Edition
 "New Act" Revised & Expanded



BRENTWOOD VILLAGE
 EDMONTON
 CANADA'S FIRST CONDOMINIUM

CONDOMINIUM IN ALBERTA

INVESTMENT BASICS FOR BUYERS & OWNERS

BOB KELLY, MBA, CMA, FCCI

This **CONDOSMART Guide** is designed to offer Alberta buyers and owners a concise description of the basics of condominium and its operating environment.

Nothing contained herein should be construed as constituting investment or legal advice.

For precise analysis of personal needs or concerns, the reader should seek the services of a competent professional.

Introduction

On September 1, 2000, the Government of Alberta brought into force a significantly revised and expanded Condominium Property Act. Content of this second edition of the CondoSmart Guide incorporates those changes that, in the author's opinion, fall under its sub-title — Investment Basics for Buyers and Owners.

The first edition of this guide appeared in 1997, and was preceded by several other publications and information activities. In 1993, in conjunction with colleagues at the South Alberta chapter of the Canadian Condominium Institute, the Wise-Buyer Guide and Seminar was conceived and developed. Also in 1993, the Calgary Herald's Real Estate Group launched a consolidated section, Condo Connection. From its first edition, and for over seven years, my column, Condo Lingo, was a weekly feature.

While the Wise-Buyer Guide was designed as a condominium primer, because of its detail the audience was often board members and professionals interested in obtaining an overview of condominium principles. With the development, in recent years, of its extensive educational program, CCI has met this need with an important resource — Condominium 100, 200, & 300.

To accommodate this evolution, and still provide buyers and owners with a compact treatment of condominium concepts and operating procedures, CondoServe offers this revised single-booklet guide. As much as possible, the content defines and discusses the cornerstones of condominium without excessive reference to development regulation and procedures. But, requirements for marketing and sales disclosure are discussed in detail.

With technical information in any area, a writer's previously published material is an unavoidable source of content. Those acquainted with Condominium: An Owner's Manual for Canada, the Wise-Buyer Guide, and Condo Lingo columns will encounter familiar description and interpretation. Readers will also note that the Guide takes neither a promotional nor a what-to-watch-out-for approach. Its philosophy is simple. If the content provides a clearer picture of investment realities, your own good sense will ensure you'll get the most from condominium's many features and benefits.

Bob Kelly

CONDO

<p>Condominium</p> <p>There are three current and related meanings. But, most precisely it refers to the title system and shared ownership relationship existing among unit owners of any master lot that has been divided, under a condominium statute, into exclusive-use units and supporting common property.</p>	pg. 8
<p>Condominium Property Act</p> <p>The name of the statute that supports, directs, and regulates condominium ownership in Alberta. Since provinces have jurisdiction over land titles, each has its own condominium legislation. While fundamental concepts are essentially similar, legislative scope and administrative technicalities may vary significantly. The Act, which must be passed into law by the provincial legislature, articulates legislative concepts and cornerstone provisions.</p>	pg. 15, 16
<p>Condominium Property Act Regulation</p> <p>The <i>Condominium Property Act Regulation</i> is a set of implementation rules, the scope of which is articulated in the <i>Condominium Property Act</i>, and for which creation authority is vested in the Ministry responsible for its administration.</p>	pg. 17
<p>Condominium Plan</p> <p>Every condominium community has a plan, registered at a land titles office, that provides unambiguous definition of the perimeter of the master lot, the location of buildings (if any), unit boundaries, and the unit-factor distribution. The document replaces the original single title with unit titles.</p>	pg. 18
<p>Condominium Corporation</p> <p>When a plan is deposited with a land titles office, an administrative body is automatically created. Membership in the condominium corporation is made up of the owners of the individual units. Its purpose is the management of the affairs of the condominium in the best interests of all owners.</p>	pg. 20
<p>Condominium Board</p> <p>In Alberta, a corporation's executive is now called a <i>Board of Directors</i>. The Act's initial Appendix 1 by-laws, although replaceable, stipulate a board of no fewer than three, except where there are not more than two owners, and not more than seven individuals.</p>	pg. 22, 23
<p>By-Laws</p> <p>A set of rules and procedures, adopted by a special majority of unit-owners, for the administration of the condominium corporation and the management and conservation of the common property. An initial set is provided in Appendix 1 of the <i>Condominium Property Act</i>.</p>	pg. 20, 21, 29

LINGO

<p>Condominium Unit</p> <p>Units are those parts of a condominium master lot which are designated for the private, exclusive use of individual owners. These "volumetric spaces", whether structure-defined compartments of air (as in the case of apartments and traditional townhouses), or columns of air (as in bare-land projects), are defined by boundaries shown on the condominium plan.</p>	pg. 11, 19
<p>Common Property</p> <p>Every part of a condominium plan that is not a unit is common property. The condominium common property supports and services the individual units, and its ownership is proportionately distributed among the unit owners in accordance with their unit factors.</p>	pg. 11
<p>Tenancy in Common</p> <p>Condominium unit-owners collectively co-own the common property as <i>tenants in common</i>. The arrangement is a long established, business-like system for administering undivided interests in real property.</p>	pg. 12
<p>Exclusive Use</p> <p>Although forming part of the common property, patios, balconies, parking, storage and other spaces are usually designated as exclusive-use areas for residents of a particular unit only. Most by-laws provide the board with authority to manage such assignment, as it may from time to time consider appropriate or optimal. Any presumed or represented tenure, permanent or long-term, should be verified and documented.</p>	pg. 19
<p>Unit Factor</p> <p>"Unit Factor" is the term used in the Alberta <i>Condominium Property Act</i> to define each unit owner's tenancy-in-common share in the common property. Unlike other jurisdictions, where a separate factor regulates distribution of operating costs, the unit factor also determines the proportionate contribution obligation (condo fees).</p>	pg. 16
<p>Unit Boundaries</p> <p>The <i>Condominium Property Act</i> determines, unless stipulated in the plan, where boundaries exist between units, and the common property. The revised legislation now distinguishes between interior and external doors.</p>	pg. 19
<p>Estoppel Certificate</p> <p>In the context of condominium, it's a certificate issued by a condominium corporation stating the up-to-date status of a particular unit's contribution account. If the corporation certifies that there are no arrears, it is "estopped" from claiming otherwise against a new owner.</p>	pg. 45

CONDO

<p>Apartments & Townhouses</p> <p>Although any type of multi-user land (and structures it may contain) can be condominiumized, apartments and townhouses are the common residential applications. Often, and in British Columbia in particular, marketing literature implies that only apartments are <i>condominiums</i>. A townhouse project may or may not be registered under the <i>Condominium Property Act</i>. If it is, units are held in condominium just like their apartment counterparts.</p>	pg. 9, 10
<p>Bare Land Condominium</p> <p>In traditional condominium, both the master lot and the structural envelope of buildings are common property. The private unit is a compartment of air-space within that envelope. It is possible, indeed prevalent now in townhouse or villa projects, to condominiumize the land only. Within the master lot, the unit is a column of air similar to a traditional subdivision. The private structure that may or may not be constructed within the unit's boundaries has no common property component.</p>	pg. 10
<p>Freehold & Leasehold</p> <p>All land titles, including condominium, fall under these two categories. It's not uncommon, however, to encounter the misleading claim that "this isn't condominium, this is freehold" (or fee simple, which is a sub-category of freehold). The only precise way to distinguish between traditional titles and condominium is to refer to the former as non-condominium.</p>	pg. 8, 36
<p>Disclosure Documents</p> <p>Developers of new and conversion condominium are required to provide prospective purchasers with extensive documentation regarding investment details and due-diligence estimates of operating costs. The <i>Condominium Property Act</i> legislates a 10-day rescission period for review and acceptance of these documents. Member boards of the <i>Alberta Real Estate Association</i> follow similar guidelines for resale contracts.</p>	pg. 43, 44
<p>Rescission</p> <p>Rescission is the right to cancel a contract under certain conditions. Every developer is required to include the following in bold face, upper case and larger print on the front cover or first page of the purchase agreement:</p> <p>The purchaser may, without incurring any liability for doing so, rescind this agreement within 10 days of its execution by the parties to it unless all of the documents required to be delivered to the purchaser under section 12 of the Condominium Property Act have been delivered to the purchaser not less than 10 days prior to the execution of this agreement by the parties to it.</p>	pg. 43

LINGO

<p>Annual General Meetings (AGM)</p> <p>Once a year, within 15 months of the last, a condominium board is required to convene an Annual General Meeting of unit owners. At the meeting, the retiring board provides owners with operational and financial reports for the year past. Owners then elect a new board, and deal with any unfinished and new business, including (if required) appointment of auditors.</p>	pg. 29
<p>Extraordinary General Meetings</p> <p>Anything other than the <i>Annual General Meeting</i> is called an <i>Extraordinary General Meeting</i>. By-laws usually permit the board to call, whenever it sees fit, or give a certain proportion of owners power to requisition, within procedural guidelines, an Extraordinary General Meeting. The purpose, usually, is to deal with an issue that requires urgent attention.</p>	pg. 30
<p>Proxy</p> <p>Written authorization given by a unit owner to another so that person can act for the owner and exercise the unit's voting share at a general meeting.</p>	pg. 30
<p>Annual Budget</p> <p>Now required by the new Act, conscientious development of an annual budget is an important duty of a condominium board. It's the basis upon which contributions are levied and funds collected for the control, maintenance, and repair of the common property and the administration of the condominium corporation.</p>	pg. 22, 23
<p>Contributions (Condo Fees)</p> <p>Condominium owners contribute to a fund for payment of common property costs (whether normal operating, reserve, or special) via assessments levied against their units. "Contributions" is the proper term, but "condo fee" has acquired colloquial, although incorrect, currency.</p>	pg. 42
<p>Special Assessment</p> <p>If sizeable repair or replacement expenditures are urgently required, and sufficient funds are not available in the reserve fund, the condominium board has little choice but to levy a <i>special assessment</i>. As would be the case with traditional houses, unit owners are required to come up with the cash necessary to rectify the problem.</p>	pg. 32
<p>Officers</p> <p>From its members, the Board elects an executive — usually a President, a Vice-President, a Secretary and a Treasurer. The President chairs meetings and often has a casting vote. The Vice-President performs the President's duties in his or her absence. The Secretary ensures minutes of proceedings are kept; and the Treasurer, that proper financial records are maintained.</p>	pg. 24

CONDO

<p>Reserve Fund</p> <p>Officially called the “<i>capital replacement reserve fund</i>”, it’s a fund of money, usually held in secure and fairly liquid investments, and set aside to provide for the repair and replacement of major parts of the common property. It is not intended to be used to cover regular or annually recurring maintenance.</p>	pg. 32
<p>Reserve Fund Study</p> <p>The purpose of a reserve fund study is to inventory the depreciating common and corporate property needing to be repaired or replaced within the next 25 years, assess the present condition, estimate when each component of the depreciating property will need to be repaired or replaced, and estimate the costs of repairs to and replacement of the depreciating property.</p>	pg. 33
<p>Qualified Person</p> <p>Every board must retain a qualified person to carry out the reserve fund study. The person who carries out the study must prepare and submit to the board a reserve fund report in writing in respect of the study.</p>	pg. 33
<p>Condominium Management</p> <p>Successful condominium communities are run in an efficient business-like fashion. Management typically involves three categories of activity — administrative, financial, and operational. And, the options for management plans typically involve a choice between Self-Management, Financial Management, Employee Management, and Full Professional Management.</p>	pg. 24, 25, 26
<p>Condominium Insurance</p> <p>Every condominium corporation must place and maintain a “master policy” over the units, other than improvements made by the owners, and against corporation, board and officer liability for action or omission with respect to carrying out their functions.</p>	pg. 34
<p>Unit Owner Insurance</p> <p>To protect against property loss, personal liability and disaster expenses, every condominium owner should purchase unit-owner insurance. Such coverage usually offers all-risks protection against an owner’s <i>personal property</i> loss from fire, theft, and vandalism and <i>improvement and betterment</i> coverage for damage to upgrades made by the owner.</p>	pg. 35
<p>Municipal Taxes</p> <p>Like traditional-house buyers, condominium purchasers are land owners. So, they must pay their fair share of municipal taxes. For assessment purposes, each unit and its share in the common property constitutes a separate parcel of land and improvements.</p>	pg. 35

LINGO

<p>Condominium Mortgages</p> <p>Buying and financing a new or used condominium residence is not much different from that of a non-condominium home. Like any home purchase, ownership of a condominium unit plus its proportionate share in the common property is an estate in land. Land Titles will issue a title and register mortgage documents and other instruments associated with standard real estate investments.</p>	pg. 37
<p>Conventional and High Ratio Mortgages</p> <p>Banks and trust companies have limits to the amount they may lend without the security of mortgage insurance. For condominium and non-condominium properties, the standard uninsured loan (up to 75%) is referred to as a conventional mortgage. High-ratio mortgages are ordinarily available up to 90% of the lower of the price or appraisal, and even as high as 95%.</p>	pg. 38
<p>Administrator</p> <p>In situations of an administrative vacuum or unresolvable conflict, the corporation or any interested person may apply to the Court for appointment of an <i>administrator</i>. The administrator will have, to the exclusion of the board, all the powers and duties that the Court may order.</p>	pg. 31
<p>Improper Conduct</p> <p>For non-compliance with the Act, the regulations, or by-laws by any party — owner, board member, employee, corporation, or developer — any interested party may apply to the Court for relief from and remedy of this alleged “improper conduct”</p>	pg. 45
<p>Non-Compliance Sanctions</p> <p>Corporations may by by-law impose monetary and other sanctions on owners, tenants and invitees of the owners or tenants who fail to abide by the by-laws. Any such by-law must define the sanctions to be imposed and the applicable amount or range of monetary sanctions.</p>	pg. 42
<p>Condominium Rentals</p> <p>Alberta’s <i>Condominium Property Act</i> recognizes that when an owner leases a unit, he or she is also leasing access to and use of the common property. Consequently, the condominium community is given statutory power to assure that its interests are considered and properly protected.</p>	pg. 46
<p>CCI, ACMA, RECA, AREA</p> <p>The organization of condominium professionals, boards, and owners is the Canadian Condominium Institute; of professional managers, the Association of Condominium Managers of Alberta; the licencing and regulatory authority for real estate brokerage, the Real Estate Council of Alberta; and the professional association of brokers and agents, the Alberta Real Estate Association.</p>	pg. 47, 48

THE MANY MEANINGS OF

con-do-min-i-um

Directly translated from its Latin roots, **condominium** means “dominion with others” or “shared domain”. Prior to the 20th century, the word referred primarily to joint rule over a territory by two or more nations. As an active meaning, this colonial relic has likely seen its day.

In modern times, no context of “condominium” other than the one we are concerned with remains in popular use. Just to keep us confused, however, it has acquired three continent-wide variations.

1. Most accurately, “condominium” refers to the whole system for divided-title co-ownership of a multi-unit master lot of land. It encompasses everything — title concepts, condominium legislation, the plan and other documentation, the corporate framework, and its administrative procedures. As such, the shared-property community — private units and common property — is properly described as being held “in condominium”.
2. Very often, the word is used to identify a particular project — its grounds, structures, private units, services, and amenities. The property is given a community identity, e.g., “The Avalon Condominium”.
3. Then, of course, there is the popular and personal “my condominium” — denoting an owner’s unit together with its share in the common property.

In *Condominium Law in British Columbia*, — a cross-jurisdictional conceptual reference, and an application analysis for legal and industry professionals in that province — Professor Dennis Pavlich defines “condominium” as:

a unique property-law regime...formally legislating a title which, broadly speaking, consists of an estate, either in fee simple (the usual case), or for life, or *pur autre vie*, or for years, in respect of a described part of a building, or designated air space, or bare land, coupled inextricably with an undivided interest as a tenant in common in respect of the remaining (“common”) areas (either in the form of land, air space, facilities or buildings).

In Alberta and elsewhere, it’s not uncommon to encounter the false claim that only traditional housing is “**freehold**” or “**fee simple**”. But, condominium can and does deliver both freehold and leasehold titles.

In contrast to leasehold, which involves time-defined tenure (the *for-years* part of the definition), the characterizing feature of a freehold estate is that it continues for an indeterminate time period. Freehold has two classes. **Fee simple** is indeterminate because it is permanent and inheritable. A **life estate** — whether limited to the grantee’s or some other’s (*pur autre*) life — is indefinite because it’s unknown when tenure will be extinguished. Leasehold condominium is much more common in B.C., particularly Vancouver, than in Alberta.

CONDOMINIUM APPLICATIONS

Condominium is not a particular style of housing, but a form of ownership. Since any multi-user parcel of land and the buildings it may contain can be held in condominium, its potential is limited only by human imagination. Already, Canada has examples of commercial, industrial, office, hotel, warehouse, storage locker, boat dock, and horse stall condominium developments.

RESIDENTIAL

APARTMENTS

Apartment buildings are probably the housing style that most people associate with condominium. Architecturally, they might be defined as private residential spaces, usually on one floor, contained within a multi-floor structure. Besides occupying valuable high or medium-density land, the arrangement is characterized by a common superstructure, foundation, roof, main entrance, interior passages, and central services.

Apartment projects are usually categorized as either high, medium, and low-rise. The first two typically involve elevator-serviced, steel and concrete construction. The latter may be wood frame, and may contain architectural variations such as external staircases and entrances. Many spacial configurations exist, but from an operational perspective the difference between a garden apartment, stacked townhouse, coach house, or villa suite may often be more a matter of marketing semantics than architectural reality. Condominium lofts are typically high-ceilinged, open-space apartments in converted commercial or industrial buildings.

TOWNHOUSES

Condominium townhouse projects normally involve side-by-side units in either row or cluster arrangements. Often young-family oriented, they are usually found in suburban neighbourhoods. A major attraction of these developments is their ability to provide affordable dwellings of a traditional family layout within a self-contained subdivision-style community. Units usually have direct outdoor access plus a private green space; and, the community often offers common recreational facilities. Also, the interior roadway layout can be more effective and efficient than if it were under public street requirements. While this style is the most prevalent, smaller scale (8-20 unit) projects with little or no communal green space are becoming popular for inner-city sites.

Something prospective purchasers must keep in mind when comparing apartments with townhouses is that the latter usually contain their own heating and hot water systems, and maybe their own air conditioning. Consequently, condominium fees for apartments will usually be higher than for similarly-sized townhouses because, as common property, these important services are delivered and maintained by the corporation. Townhouse owners will have a smaller condominium fee, but must pay these utility costs individually, including system repair and maintenance.

UNITS & COMMON PROPERTY

BUNGALOW / VILLA STYLE

An increasingly popular alternative to the row townhouse is the semi-detached or cluster arrangement of bungalow-style architecture. This variation provides more generous spacing between units, which usually have all primary living areas on the main floor supplemented with additional development on the lower level. Particularly attractive to mature adults and empty-nest couples, it's a rapidly expanding sector. Developments may also offer prospective owners interesting choices in the area of amenity packages. Also, two-story and split-level architecture is equally applicable to this market.

Stylistic labels aside, most condominium townhouse projects share common expense categories and operating concerns that set them apart from the apartment variety. Furthermore, although it may be difficult, architecturally, to distinguish traditional townhouse condominium from its bare land cousin, there are important differences. With the traditional format, the exterior of the structures is included in the common property, with the private unit comprising a compartment of air-space within this co-owned shell. As a result, the condominium corporation's authority regarding architectural consistency and duty of external maintenance is supported by statute and its by-laws. With bare land applications, these community controls must be separately articulated.

BARE LAND CONDOMINIUM

This latest form of condominium has had unprecedented growth in the past few years. Today, most new young-family townhouse or mature-adult bungalow/villa projects are developed on a bare land basis. Indeed, some predict it will become the preferred sub-division arrangement of the 21st century. Although it is a subdivision of land similar to traditional non-condominium projects, the individual land-lot units are nevertheless contained within a master-lot perimeter. As such, they are subject to the same community-of-owners' administration, under the *Condominium Property Act*, as any other condominium application.

Bare land units are columns of air-space defined by reference to boundaries on the land. Structures that are built wholly within (detached construction), or just touching (attached), these boundaries are totally private property. Party-wall agreements (if necessary), restrictive covenants, easements, and co-operative maintenance commitments make the arrangement workable. Although bare land condominium units are land lots, their definition is subject and subordinate to the master condominium plan, which delivers trunk utilities and services, and contains the privately owned interior roadways and amenity structures.

Units are those parts of condominium projects that are the exclusive, private domains of individual owners. In an apartment complex, the space is defined by reference to floors, walls, and ceilings within the building. In townhome projects, two alternatives are possible.

In the traditional arrangement, **unit boundaries** lie somewhere inside the exterior walls, roof, and foundation. With the increasingly popular **bare land** application, unit boundaries are not referenced to buildings at all, but unitize the land much like a traditional subdivision.

Common property is every part of a condominium plan that is not a unit. It comprises the shared domain that surrounds, supports, and services the individual private units.

Who owns the COMMON PROPERTY?

Subsection 6(2) of the *Condominium Property Act* states that:

*The common property comprised in a registered condominium plan is held by the owners of all the units as **tenants in common** in shares proportional to the unit factors for their respective units.*

But, what is Tenancy in Common?

It's the most flexible, businesslike, and direct form of real estate co-ownership.

If two or more persons want to:

- 1) own a parcel of real estate together;
- 2) possess interests going directly to the land (i.e., without employing a separate legal entity such as a corporation to hold title); and
- 3) receive individual shares that
 - a) can be structured in any (equal or unequal) proportions, and
 - b) are separately mortgagable, freely transferable, and inheritable (i.e., without the equal shares and survivorship aspects**Joint Tenancy**),

they will take the property as **tenants in common**.

TENANCY IN COMMON

Tenancy in common is a long-established system of undivided ownership — meaning proportionate co-owners share use and enjoyment of a whole property.

In the case of condominium, that “whole property” entity is the common property — i.e., everything that is not a unit. In the absence of a written co-ownership agreement, common law provides for the accounting, allocation, and collection of operating expenses, and for the reimbursement of expenditures that result in capital enhancement. With condominium, the plan and the by-laws constitute a contract between the individual unit owners and the condominium corporation.

So, while condominium may seem like a dramatic departure from traditional housing in a physical sense, condominium titles nevertheless utilize established ownership concepts. More than anything, the quantum jump involved was recognition that three-dimensional survey documentation could unambiguously describe, and land titles’ registration was capable of permanently recording, this very effective matrix of private and common-property domains.

The **Condominium Property Act & Regulation** provide authority and direction;
 the **Condominium Plan** — the public record;
 the **By-Laws** — the administrative framework; and,
 the **Corporation and Board** — the democratic management body.

How these levels relate to each other is portrayed graphically in the authority and operational pyramid opposite.

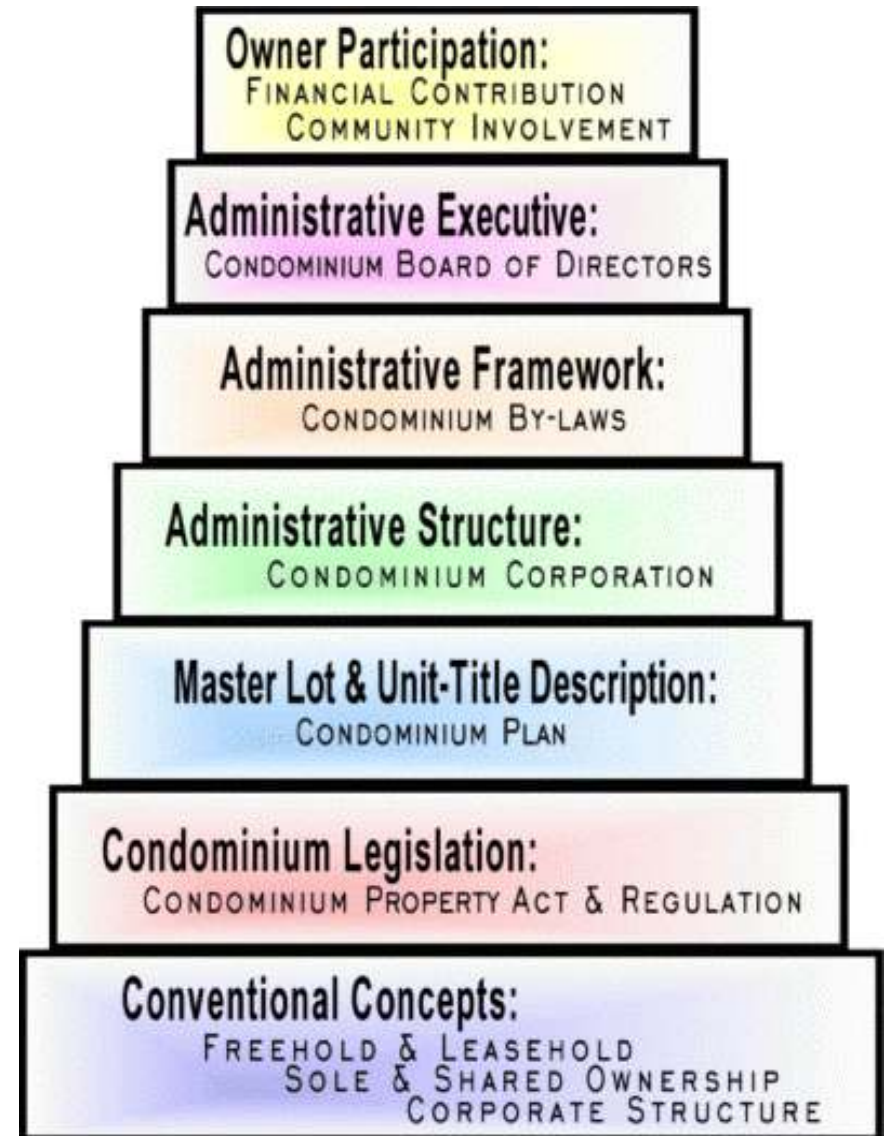
Guaranteeing Good Government

Who’s responsible for ensuring a condominium is properly run?
 The owners, of course — individually, and collectively!

Section 28(7) of the Alberta *Condominium Property Act* directs that “the powers and duties of a corporation shall ... be exercised and performed by the board of the corporation”.

Registration of a condominium plan may create a condominium corporation with the mandate to control, manage and administer the common property. But, it is the unit owners who own the common property — who have the voting franchise to elect a reliable, competent executive. The words replaced by dots between “shall” and “be” above — “subject to any restriction imposed or direction given at a general meeting” — reinforce that ultimate responsibility.

CONDOMINIUM OPERATIONAL AUTHORITY PYRAMID



Among the many attractive features of condominium are freedom from tedious tasks and acquisition of shared amenities. Purchasers should appreciate, however, that there is no such thing as a “totally carefree” condominium investment.

Regardless of how well projects are structured — and many are as value-laden and well-organized as developers could likely make them — ultimate responsibility for efficient and fair day-to-day administration rests with the **Board**. And, responsibility for the composition of that executive rests with each and every owner. It's their shared-property business; there's no condominium cop, or curator!

It is possible for owners and their board to effectively self-manage the condominium property, especially in smaller projects. In most cases, however, it's normal for the community to employ professional management to provide a range of property and administrative services.

Under full-service management, little if any involvement is expected of individual owners. This may contribute to confusion regarding condominium realities. Sometimes it has the effect of ascribing authority and duties to the management firm that are not consistent with fact.

Much has been written about the attractions of the condominium lifestyle — usually from a marketing perspective. And, it's all true!!

The advantages of condominium are well known — desirable location, shared amenities, architectural controls, enhanced security, co-ordinated maintenance and repairs, landscape services, snow removal, etc. What's often understated, however, is the role that owners (not all, but certainly some) must play in ensuring those features and benefits continue, and that community expectations are met.

Some theorists claim that condominium is really a mini-municipality, whose subordinate relationship to the urban government is an important step in the federal, provincial, municipal continuum. For many owners, condominium is an initiation to organizational structure and procedure. Documentation may seem intimidating, responsibilities challenging, the politics aggravating, and the decision-making authority seductive. But, often it's a launching pad to broader community involvement.

In most areas of social and economic organization, not every stakeholder wants to take an active role. That's why we have governments. But, an informed, involved electorate promotes cost-effective administration.

Maximize your investment awareness.
Wise buyers make wise owners!



Perhaps the best view of how your condominium investment is organized and operates is a mountain-top perspective. Let's hike up the operational pyramid.

Condominium is based on established concepts. It provides fully-registrable land titles — both freehold and leasehold; defines the sub-division of condominium airspace with advanced documentation; distributes proportionate interests with (hopefully) arithmetic precision and economic equity; and, employs the administrative framework and democratic decision-making procedures of corporate theory. Indeed, most everything about the arrangement is rooted in logic, mathematics, geodesy, legal estates, cost accounting, and organizational theory.

CONDOMINIUM STATUTES

Since provinces have jurisdiction over land titles, each has its own condominium legislation. However, few real differences exist in fundamental concepts.

All statutes articulate a system for implementing and documenting sub-division of condominium air-space into private units and common property. And, each part of this master lot is susceptible to the same exclusive and shared-estate concepts as exist for traditional land ownership. Most significant variations can be found in the level of regulatory controls regarding development, conversions, rentals, disclosure, reserve requirements, and directives regarding community administration.

Diversity of terminology is still a source of much confusion. For example, a “condominium unit” in Alberta would be a “strata lot” in British Columbia, or an “exclusive portion” in Quebec. Alberta's “board of directors” used to be called a “board of managers”, and is labeled a “strata council” across the Continental Divide.

Because it represents an amalgam of so many components, the ownership system is given legal articulation and cement via the *Condominium Property Act*. And, with the revisions brought into effective September 1, 2000, the statute is given significantly expanded administrative scope, through Ministerial authority, in the *Condominium Property Regulation*.

CONDOMINIUM PROPERTY ACT

The statute establishes documentation and disclosure requirements for the creation of condominium, and imposes an administrative framework upon the community of owners. In Alberta, the elected executive is now called a *Board of Directors*.

In governing condominium for the benefit of owners, the Act:

- a) Defines and interprets terms and concepts as they apply under the statute;
- b) Details the content requirements of a condominium plan, and the documentation and registration process involved;
- c) Permits, in accordance with procedures articulated in the regulations, the amendment and modification of a condominium plan;
- d) Allows for, in accordance with procedures in the regulations, the development in phases of buildings or land in a condominium plan;
- e) Prescribes boundaries, both standard and optional, between units and common property;
- f) Details disclosure requirements providing protection for purchasers of both new and rental-conversion units;
- g) Creates easements for support and utilities;
- h) Provides for creation of a condominium corporation and an administrative board;
- i) Stipulates maximum delays for developers and boards to convene general meetings of the corporation;
- j) Establishes “standard”, but replaceable, by-laws for the control, management and administration of the condominium, and provides for their enforcement;
- k) Defines the powers and duties of the corporation, the elected executive, and unit owners;
- l) Establishes standard insurance requirements;
- m) Defines actions that require special (75%) resolutions (e.g. amending by-laws);
- n) Provides for some corporation controls on individual-unit rentals;

- o) Provides for the control, use and disposition of common property, and the creation of exclusive-use areas;
- p) Provides authority for enforcement of common expense contributions;
- q) Appends an initial by-law set applicable to every condominium, until replaced;
- r) Prescribes requirements for notices (change of board, address of corporation, rental tenants, etc.); and,
- s) Establishes condominium termination and dissolution procedures.

CONDOMINIUM PROPERTY REGULATION

The *Condominium Property Act Regulation* is a set of implementation rules, the scope of which is articulated in the *Condominium Property Act*, and for which creation authority is vested in the Minister responsible for its administration. With the September 1, 2000 revisions, the role of the regulations was significantly expanded — to the point where it comprises almost 40% of the size of the Act and Regulation combined.

With its provisions and directives, the Regulation governs:

- a) Registration of condominium plans and other condominium documents;
- b) Capital replacement reserves, funding plans, studies by qualified persons, reports, maintenance, reviews, and access to the plan and reports;
- c) Phasing procedures, disclosure, registration, sale, & board control transfer;
- d) Amalgamation, modification, and amendment procedures for condominium plans;
- e) Insurance requirements with respect to perils and coverage amounts;
- f) Requirements and application rules for purchaser protection programs; and
- g) A variety of miscellaneous and transitional provisions.

For many buyers and owners, this may be as much as you care to know about the legislation at this point. But, if you become a board member, as many readers will, the Act and Regulation will likely find their way into your library. Copies can be purchased from the *Alberta Queen's Printer* — see the *Information and Organization Directory* at the back of the Guide.

CONDOMINIUM PLAN

The next level up the authority and organizational pyramid — the one that plays the most important defining role regarding what it is exactly that you own, or will own — is the survey description of the condominium master lot and its units, together with other specified information, that's registered at Land Titles.

The constitutional cornerstone of every condominium community is its permanent public record — the **condominium plan**.

The document is not, however, a narrative “plan” — one that outlines goals or a scheme of action. Rather, it's a detailed graphic portrait of each development's physical and proprietary architecture.

Condominium projects can range from duplexes to extensively-serviced master lots containing hundreds of units — often involving a mix of residential, commercial, and other applications. Within a multi-unit environment, each unit owner receives title to a desired combination of exclusive space, location, construction quality, security, and amenities.

For successful conflict-free operation of this ownership mosaic, where one domain ends and another begins must be clearly articulated. Since modern documentation techniques permit unambiguous definition of air-space segments of land lots and the structures they contain, the plan is able to describe how use and enjoyment rights to the whole condominium property are assigned.

Consequently, one part can be owned and used by all unit-owners collectively; an adjacent part owned and used by one or more parties exclusively; and another part owned by all, but with use restricted to occupants of one or more units.

Upon registration with the applicable Land Titles Office, a project comes into legal being with condominium titles being issued in place of the old single title. As a result, the relationship of these individual titles is memorialized. The 2000 Act now permits the amendment of condominium plans. A special resolution of the corporation and Court approval are required. The procedure, categories of amendment, and criteria are detailed in the *Condominium Property Regulation*.

The condominium plan contains a great deal of information. It describes the perimeter of the master lot, the location of buildings, if any, and the **unit boundaries**. Units are identified by consecutive numbers from 1 in the first phase to the last unit in the last phase. If adjacent parcels amalgamate, the amalgamating plans are assigned consecutive letters. The plan also sets out the respective unit factors, the basis for their determination, and each unit's approximate floor area — or land area in the case of bare-land condominium.

Plans are identified by a **7-digit registration number** (except for those registered before 1974, which have a 3-letter, consecutive digit format), which is assigned when registered at a land titles office.

UNIT BOUNDARIES

For projects registered prior to January 1, 1979, unless otherwise stipulated on the plan, the common boundary between units is the centre line of the floor, wall or ceiling. Since then, unless otherwise defined, the only portion of the floor, wall or ceiling included in the unit is the interior finishing material (i.e., lath & plaster, gypsum board, paneling, finish flooring, etc). This ensures that all common services — pipes, conduits, wires, etc. — and common structural components are defined as common property.

In the case of a bare land plan, boundaries are referenced to survey markers, and deemed to extend vertically upward and downward without limit.

EXCLUSIVE-USE AREAS

In Alberta, parking spaces, balconies, storage, and other exclusive-use areas usually form part of the common property. This ensures community control over their proper use. But, it also means that condominium boards have the power to manage common property assignments. The right of exclusive, permanent tenure to an area that is accessed through one unit only, such as a balcony, is likely obvious. However, purchasers expecting to rely upon undisturbed tenure of away-from-the-unit spaces should ensure that any represented assignment be covered by long-term lease. Of course the potential for dispossession, or the inability to assign rights to a subsequent unit owner, is not a question if the area is a separate unit — as is the case with parking stalls in some buildings.

ALBERTA'S UNIT FACTOR

Other than unit boundaries, the one provision of the plan that most affects individual owners on an continuing basis is the proportionate interest factor. This value represents 1) the common-property ownership share attached to each unit, 2) the unit owner's proportionate obligation to contribute to its operation and upkeep, and 3) the voting franchise attached to the owner's unit.

Unlike other provinces, Alberta assigns a single factor for all three interests. The sum of all unit factors in a condominium plan must total 10,000 (100 X 100) — which means that an assigned factor of 876 represents an 8.76% share in the common property and a similar proportionate obligation to contribute to the budget. The 2000 revisions now permit, through by-law, the contribution requirement to be other than by unit factor. The equity and non-oppressiveness of any actions in this area by developers and/or special majorities of owners will be subject to the “fair dealing”, “good faith” requirements and “improper conduct” sanctions in the Act.

In Alberta, this single factor is most often computed on square footage — making it more of a proportionate-consumption factor than an equity/common-interest one. Therefore, to avoid inequities that might result if the condominium status is either voluntarily or involuntarily terminated, upon proper application the Court may impose any conditions and directions it sees fit with respect to adjusting and directing monies flowing from sale and/or insurance proceeds.

ADMINISTRATIVE FRAMEWORK

CONDOMINIUM CORPORATION

Each condominium community is a self-governing, shared-property enterprise. While it may be organized and administered under a corporate structure, it is not governed by the *Business Corporations Act* or the *Companies Act*. Condominium corporations are created under the *Condominium Property Act* upon registration of a plan. Yet, they have many of the artificial-person, ongoing-existence features of business corporations — including authority to represent the owners in matters of community interest. They can sue and be sued. They do not, however, enjoy the limited liability of commercial counterparts.

Contrary to popular myth, the **condominium corporation does not own the common property**. As part of their individual titles, common property is owned directly by the unit owners in undivided, tenancy-in-common shares. The corporation exists, however, to control and manage the common property, enforce the by-laws, and administer the condominium arrangement in the best interest of all owners. By-laws direct the conduct of this shared-property business; the board is its democratically elected executive.

Appendix 1 of the *Condominium Property Act* prescribes by-laws that come into effect when a condominium plan is registered. However, these are considered minimal and generic, and are usually not site-specific enough for proper administration. Consequently, it's normal for a good developer to immediately replace the statutory by-laws with a more appropriate set.

BY-LAWS

By-laws are considered a contract to which every unit owner is an informed and willing subscriber. They establish a detailed framework for operating a project. And, as a contract between unit owners, the condominium corporation and the board, they define the powers, rights and responsibilities of all parties.

By-laws deal with

- Duties of the unit owners (typically, unit and privacy area maintenance, compliance with rules and regulations, payment of contributions, etc.);
- Duties of the condominium corporation and its board — i.e., managing the common property; maintaining, repairing, and replacing service components; collecting unit-owner contributions to operating costs; establishing and maintaining replacement reserves; insuring units and common property; etc);

- Powers of the board; (i.e., to borrow funds; invest contributions; assign privacy areas; make rules and regulations; hire staff and professional services; etc);
- Composition of, election to, and removal from the board;
- Convening and conduct of meetings; voting procedures; appointment of managing agents; maintenance of records; financial statement preparation and delivery; etc;
- Enforcement of by-laws and collection procedures; and,
- Standards (behavioral and architectural) regarding noise, signage, pets, laundry, storage, parking, electrical and mechanical systems, etc.

By-laws may create the impression that condominium is a brave new world constructed around constraint and control. But like their role in commercial corporations, condominium by-laws simply provide a framework for proper administration of a shared investment.

Alberta's statutory by-laws include a set of common-sense house rules. Although they may be fine-tuned for a particular development, these use restrictions represent a basic good-neighbour set, and are reproduced below as a example of what to expect in any well-organized project:

Restrictions in Use **Section 36 — Appendix 1**

An owner shall not

- a) use or enjoy the real or personal property of the corporation or the common property in such a manner as to unreasonably interfere with its use and enjoyment by other owners or the occupants;
- b) use his unit in a manner or for a purpose that will cause a nuisance or hazard to any other owner or occupant;
- c) use his unit for a purpose that is illegal;
- d) make undue noise in or on his unit or on or about real property of the corporation or the common property;
- e) keep an animal in or on his unit or on the real property of the corporation or the common property after a date specified in a notice given him by the board;
- f) in the case of a residential unit, use his unit for the purpose other than for residential purposes;

- g) do anything in respect of his unit, the real or personal property of the corporation or the common property or bring or keep anything on it that will in any way increase the risk of fire or result in an increase of any insurance premiums payable by the corporation;
- h) use a toilet, sink, tub, drain or other plumbing fixture for a purpose other than that for which it was constructed;
- i) hang or place on the real property of the corporation or the common property or within or on a unit anything that is, in the opinion of the board, aesthetically unpleasing when viewed from outside the units;
- j) leave articles belonging to his household on the real property of the corporation or the common property when those articles are not in actual use;
- k) obstruct a sidewalk, walkway, passage, driveway or parking area other than for ingress and egress to and from his unit;
- l) use any portion of the real property of the corporation or the common property except in accordance with the by-laws.

In Alberta, the *Condominium Property Act* requires that such restrictions arise by by-law only. A special resolution of all owners is necessary for amendment.

THE BOARD

Every condominium must have an elected executive — the *board*. Charged with enforcement of community by-laws, the board exercises its powers in performance of the corporation's responsibilities, as outlined in the Act and Regulations.

Duties include:

- Exercising and discharging the duties of the office of a board member honestly and in good faith;
- Declaring a material interest in any agreement, arrangement, or transaction to which the corporation is or is to become a party, not voting in respect of any such matter, and not being counted when determining a quorum for such a vote;
- Obtaining and maintaining insurance on buildings, common facilities and insurable improvements to *full replacement value*, and all other coverage required by regulation;
- Keeping the common property and other assets in a state of good and serviceable repair and maintenance;
- Complying with notices and orders of any municipal or public authority;

- Filing at land titles, in prescribed form within 30 days of the conclusion of an annual general meeting, the names and addresses of the board members;
- Establishing a fund for administrative expenses sufficient for the control, management, and administration of the common property;
- Establishing and maintaining a capital replacement reserve fund;
- Raising necessary operating and reserve funds by levying contributions on owners in proportion to unit factors (or, if provided for in the by-laws, on a basis other than that of the unit factor);
- Retaining a "qualified person" to carry out a reserve fund study of the depreciating property to determine the funds necessary for the reserve fund;
- Approving a plan, based on the reserve fund report; for providing for sufficient funds to be collected through owners' contributions, and providing them copies of the approved plan;
- Convening an annual general meeting, once a year, within 15 months of the conclusion of the preceding meeting;
- Preparing financial statements, in accordance with generally accepted accounting principles, for the previous financial year, and an annual budget for the following year ;
- Distributing copies of the financial statements and annual budget to the owners;
- Providing to any owner, purchaser or mortgagee making a written request, a copy of an insurance certificate within 10 days, and/or a copy of the policy within 30 days;
- Permitting, upon 10 days written notice, inspection by a mortgagee of the management or administration records of the corporation, and/or minutes of board meetings and general and similar meetings of the owners.

At least 2/3 of the board members must be unit owners or mortgagees unless the by-laws provide otherwise.



MANAGING CONDOMINIUM

The benefits and advantages of condominium don't just happen spontaneously. Nor are they provided by some public trustee or curator. They involve the conscious, contracted sharing of common property and resources. In fact, every project should be regarded as a private, shared-property business directly owned and operated by the unit-holder community.

Successful condominium communities are run in an efficient business-like fashion. To assist in achieving that goal, all unit owners are voting members of a project's administrative machinery — the *condominium corporation*.

The corporation is responsible for enforcing by-laws and managing the common property. The elected executive of every condominium is its board. The board has authority to exercise the power and duties of the corporation, subject to restrictions imposed or direction given at a general meeting.

Condominium management typically involves three categories of activity.

ADMINISTRATIVE

- Maintain records
- File documents
- Plan and organize meetings
- Prepare/deliver notices, agendas
- Regulate business, take minutes, record votes
- Prepare reports / estoppel
- Handle correspondence
- Produce newsletters
- Secure and maintain insurance
- Negotiate service contracts

PHYSICAL

- Inspect property
- Maintain common property structure/grounds utilities/amenities
- Repair or replace damage
- Hire and supervise staff
- Administer service contracts
- Schedule and inspect work

FINANCIAL

- Develop operating and reserve budgets
- Assess and notify owners
- Collect and bank funds
- Maintain proper accounts
- Disburse funds
- Prepare financial statements
- Assist auditors

The board of a condominium is responsible for developing and setting policies, and for establishing operating procedures. There are four general approaches to condominium management.

SELF-MANAGEMENT

One of the most important duties of a condominium board is implementation of a management plan.

Condominium **self-management** is the do-it-yourself approach. The board not only decides policies, but also assumes responsibility for delegating and supervising performance of duties involved.

This option is usually only attractive to owners of a small condominium project — and then, only if the executive and unit owners have the time, skills, and enthusiasm to devote. That is not to say larger projects, comprising more than 25 units, have not been successfully self-managed. Cost-savings, however, must be carefully weighed against increased risks and potential liabilities.

Under self-management, condominium boards usually delegate to the treasurer the task of collecting fees, paying bills, investing funds, and preparing and delivering financial reports. Other members may take on site inspection, receiving tenders, contractor supervision, handling emergencies, and communicating with owners and outsiders. The secretary will likely prepare all internal and external communications, and issue required documents.

A popular misconception is that self-management means self-maintenance. Of course, on a volunteer basis, owners may decide to handle grass cutting,

snow clearing, garbage removal, and preventative maintenance. But, most self-managed projects employ some combination of contract services, full- or part-time employees, and community volunteers. There are, however, some problems involved.

Often, self-management tends to over-tax the energies and goodwill of the more public-spirited members of the board and owner community. Where there are not enough skilled and active volunteers, the workload is likely not evenly spread. Then, the risk exists that essential tasks may be delayed or overlooked.

Also, there is the issue of who directs the work. Unit owners sometimes see themselves as self-appointed watch-dogs. To prevent confusion and conflict, supervisory control should vest in one person. And, the nature and extent of that authority should be communicated to and clearly understood by everyone.

Self-management can only thrive on continued enthusiasm and participation. If either begins to wane, problems emerge. It is important, therefore, that a board at least consider a contingency plan for the time a change becomes necessary.

FINANCIAL MANAGEMENT

This is often a very efficient and cost-effective option for smaller communities.

The shared-property business of condominium requires regular, conscientious attention to collections, banking, bill paying, record keeping, and financial reports. In fact, these tasks are often the most time-consuming part of condominium management. Money-related activity does not lend itself to group contribution or frequent rotating delegation. Although routine, it benefits from continuity of performance, and demands skills, accuracy, and dedication.

Fortunately, the financial-task package is one of the easiest to contract out to qualified professionals. This then allows a *self-managing board* to focus on distributing remaining tasks more evenly. And, since site supervision is still a large ongoing job, externalizing financial management lessens the chance of a common ailment, board burn-out.

There are some important, concrete benefits involved with this option. Bookkeepers and accountants familiar with condominium will probably provide more meaningful reports. The risk of serious errors or omissions occurring is minimized — together with the associated liability. And, it often enhances community relations when unit-owners do not have to interface with neighbors regarding their regular obligation to share expenses.

Here are some of the financial management services that may be contracted.

- Preparation and delivery of assessment and delinquency notices;
- Common expense collections;
- Banking;
- Scheduling invoice payments and preparing cheques for authorized signatures;
- Maintaining accounts;
- Providing the Board with monthly financial statements;
- Developing annual and reserve fund budgets;
- Assisting the auditor (if applicable) in preparation for and audit of annual statements;

If the by-laws require an audit, obviously it should be conducted by a professional other than the condominium's accountant. Also, the Treasurer, outside accountant, or anyone else handling the corporation's funds, should be bonded directly to the corporation.

EMPLOYEE MANAGEMENT

A third option available to condominium corporations is a workable alternative to both totally voluntary self-management and full professional management. It involves hiring a full- or part-time employee who may reside either on- or off-site.

Duties will vary according to the needs, size, and resources of the community. But, typically, the manager assumes most of the day-to-day property maintenance and administrative tasks. Responsibility for establishing policy and supervising its implementation still rests with the board, however. An employee manager simply carries out these policies.

In large projects, the employee manager may have authority to hire and supervise additional maintenance and/or clerical staff, administer service contracts, and liaise with professional advisors.

Completely self-managed communities always face the possibility of a skills and experience gap when major changes in the board of managers occur. One of the benefits of employee management is the measure of continuity it provides.

On the other hand, the potential exists for excessive dependency on a single individual. Anticipating and preparing for absences due to illness or vacations are important concerns. And, in the case of resignation or termination, the community faces both the loss of concentrated knowledge and the challenge of finding a qualified replacement within an acceptable time. Employee management can be a highly satisfactory arrangement. But, there are two important concerns — one, bureaucratic; the other, relational — that demand a board's attention and understanding.

With this option, the condominium corporation is hiring a direct employee. Besides developing an appropriate job description, hiring a qualified candidate, and implementing an appropriate supervision process, the board must contend with the administrative demands placed upon every employer.

Attention must be paid to appropriate bonding and the regular reporting and remittance procedures of Workman's Compensation, Unemployment Insurance, and the Canada Pension Plan. Also, there may be income tax implications if an on-site residence is provided at less than economic rent.

An on-site employee manager often has a very positive impact upon community spirit and co-operation. Sometimes, however, internal disputes are aggravated when cliques develop and the manager is seen to be aligned with one side. Such personal relationships, and the authority they appear to convey, can affect a board's power to supervise, direct, and (when necessary) dismiss.

FULL AGENCY MANAGEMENT

Full-service contracts with specialized management firms provide condominium communities with the maximum of continuity.

While owners and their elected boards may change one year to the next, professional management offers both expertise and stability. Since on-site staff are likely direct employees of the management company under supervision of a portfolio manager, service disruption is usually minimal because duties can be quickly re-allocated to other members of the firm.

Although professional managers typically assume most of the day-to-day administration and common property maintenance, the board still retains the major decision-making function.

Under this option, the board operates as an executive committee. And, since the arrangement usually consumes much less of their personal time than other options, it makes board service possible and attractive for more owners.

Contracting a complete range of administrative and property services is usually a little more expensive, in pure dollar terms, than other options. Yet, while almost essential for projects of 50 or more units, the savings in time, effort, and aggravation still make full agency management very attractive for communities of all sizes. And, the competence and experience involved minimizes the risk of major errors or oversights. Of course, full-service management does not eliminate the possibility of some level of owner involvement — nor does it preclude recourse to other specialized assistance if required or desired.

Besides providing the usual complete range of financial, property, and administrative services (including regular attendance at board meetings and the annual general meeting), professional management can be helpful in encouraging and assisting

committee activities. Owner involvement not only contributes to a well-run project, but often enhances property values. And, since professional management frees a board from time-consuming routine duties, it allows attention to be focused on building community spirit.

While a professional firm may be pro-active, the board must maintain effective control. And, it should never lose sight of the fact that the management company works in the best interests of the whole owner community. A management-services agreement is, after all, just an employment contract of limited duration, authorizing the agent to perform, for compensation, tasks the board and owners do not have the time, skills, or inclination to do for themselves.

COMMUNITY DEMOCRACY

Once a board is elected, it is given power to exercise the powers and duties of the corporation "subject to any restriction imposed or direction given at a general meeting". Usually the board meets once a month or so, depending upon the nature of its management plan and scope of hands-on, day-to-day activities it undertakes. Unit owners usually meet only once a year.

Initial by-laws in *Appendix 1* of the *Alberta Condominium Property Act* contain the following order of business for annual general meetings, and if appropriate, for extraordinary general meetings.

- (a) Call to order by the chairman;
- (b) Calling of the roll and certifying of proxies;
- (c) Proof of notice of meeting, waiver or proxies, as the case may be;
- (d) Reading and disposal of any unapproved minutes;
- (e) Reports of officers;
- (f) Reports of committees;
- (g) Election of members of the board;
- (h) Unfinished business;
- (i) New business;
- (j) Adjournment

In Alberta, the original owner-developer must call an Annual General Meeting within (a) 90 days from the day that 50% of the units are sold, or (b) 180 days from the day that the first unit is sold (both applicable to the first phase of a phased development). If the developer fails to do so, any owner may convene the meeting. After that, the board must call an AGM every year, within 15 months of the last.

Like the federal, provincial and municipal governments we elect, once given authority to administer community affairs covered by the condominium statute and project by-laws, boards can do virtually anything that is consistent with their mandate. They are constrained, however, from acting beyond the powers vested in them, and must take decisions consistent with the corporation's duty under Section 30 to control, manage and administer for the benefit of all owners.

Owners should, therefore, give thought and care when electing their executive. Condominium is not designed to operate on a consensus basis, by having every board decision subject to community approval. But, by-laws normally provide a mechanism whereby a sufficient number of concerned owners can request community input into an issue — by convening an *extraordinary general meeting* for that purpose. The *Appendix 1* initial by-laws state that the board must, upon requisition in writing by owners of 15% of the unit factors, call an extraordinary meeting to consider special business. Since by-laws in the province can be and likely have been replaced, be sure to confirm this percentage.

Remember, condominium isn't a "we versus they" environment. Everybody's voice on every issue counts. If you can't make it to a meeting, give your *proxy* to someone you trust to vote in your place.

COMMUNITY RELATIONS

A condominium board and its committees can do many things to foster the unit-owners' appreciation of their respective rights and responsibilities. By promoting understanding, the project's mini-government will greatly enhance the likelihood of community success and harmony.

People who choose to live in condominium do so because of its mutual benefits. But, these benefits exist only because owners accept both a shared environment and shared responsibility for its financial well-being. Co-operation and communication are, therefore, crucial. Regular communication, newsletters, and unit-owner committees are important components.

People who buy units without fully informing themselves of existing rules and restrictions are, regrettably, a recurring source of conflict. Often, their claims for exemption attempt to deflect blame to representations by sales agents or previous owners. In most cases, however, the rules at issue are clearly articulated in documentation the purchaser reviewed and accepted. Whether the owner is forced to adjust expectations, decides to sell and move, or attempts to challenge the rule in court, the situation invariably leads to conflict and hard feelings.

Prospective purchasers often have lifestyles involving a particular passion, business or hobby. Sometimes, these activities infringe upon the rights or require the accommodation of neighbors, or violate architectural guidelines for common property. Obviously, anyone who falls into this category should verify in writing his or her right to such activity. Pets of any kind; extra parking; barbecues; musical performances (live and recorded); motor homes and motorcycles; home crafts involving noisy machinery; antennae; and permanent alterations to exclusive-use areas are some examples.

DISPUTE REMEDIES

The 2000 revisions articulate support for non-litigious remedies to disputes by providing that any such matter may, with the agreement of the parties, be dealt with by means of mediation, conciliation, or similar techniques to encourage settlement. If these attempts at dispute resolution are not successful, the matter may be put to arbitration.

Arbitration is a process of referring the facts of a dispute to an impartial person or persons chosen by the parties involved — who agree to abide by decisions taken. By confiding resolution to personally-chosen, knowledgeable arbitrators, the parties avoid the formalities, expense, delays, and adversarial environment of civil litigation.

The *Alberta Condominium Property Act* does not define the process, but a previous British Columbia *Condominium Act* directed that arbitrators: 1) shall hear the issue as soon as possible at a convenient location; 2) shall conduct the hearing as they believe proper, allowing each party adequate opportunity to present and rebut evidence; 3) may accept evidence on oath, affidavit or otherwise; 4) may make whatever award they consider just and equitable; and 5) have the award entered into and enforced as if an order of the court.

Section 77 of the *Condominium Property Regulation* does, however, state that if the parties to the dispute are unable to agree on a mediator or arbitrator, the Alberta Arbitration and Mediation Society is, with the parties' agreement, authorized to appoint one.

ADMINISTRATOR

What happens if an insufficient number of, or no owners, mortgagees or other authorized parties will contribute to the administration of the property, or if there is a serious developer/owner turnover conflict, or if such an acrimonious dispute develops that all attempts at providing the required good faith direction are thwarted, or for whatever other reason an administrative vacuum develops?

In these worst-case situations, the corporation or any person may apply to the Court, under Section 58 of the Act, for appointment of an **administrator**. The administrator will have, to the exclusion of the board, all the powers and duties that the Court may order, will be appointed for a fixed time or indefinitely, on any terms and conditions, and at any remuneration, it thinks fit.

This assumption and delegation of the owners' responsibilities and authority is a no-other-option recourse. Not only will it likely prove to be expensive, but also may not provide the basis for an enduring solution to the problem.

RESERVE FUNDS

More than ever before, condominium purchasers of both individual resale and developer conversions recognize the investment protection an adequate “reserve fund” offers. This long-range planning feature has been likened to a condominium RRSP. It’s an apt description, since interest earned on “reasonable” reserves is not treated as taxable by Revenue Canada.

Banks and trust companies (as lenders) and mortgage insurers (such as Canada Mortgage and Housing Corporation) pay special attention to this important value factor when assessing investment security. Marketing agents of units in communities with healthy reserves also recognize the competitive edge it offers vendors they represent.

If the owner of a traditional house is faced with an unexpected, substantial expenditure — roof or furnace replacement, foundation repairs, etc. — he or she has a choice. The problem can be addressed immediately — paying the costs from cash savings or with borrowed funds. Or, the owner may postpone the work required, and run the risk of property dilapidation and devaluation. That choice cannot and should not be available with condominium. A primary duty of the corporation and its board under the *Condominium Property Act* is to keep the common property “in a state of good and serviceable repair”. Inattention to or avoidance of this responsibility may constitute negligence and result in liability.

A condominium community usually creates a reserve by setting aside a small amount each month — as a budgeted part of each owner’s regular contribution. Failure to fund adequate reserves may result in large increases in monthly assessments, or a mandatory lump sum payment called a **Special Assessment**.

Section 38 of the 2000 revised *Condominium Property Act* now requires every Alberta condominium corporation to, subject to the regulations, establish and maintain a *Capital Replacement Reserve Fund*. The stated purpose is to provide for sufficient funds that can reasonably be expected to provide for major repairs and replacement of the common property and other corporation property, where such repair and maintenance does not normally occur annually. The adequacy of such funds must be determined by a *reserve fund study*. This scientific approach to analysis and forecasting is rapidly becoming a continent-wide standard.

It must be remembered, however, that a reserve balance is not by itself an indicator of investment quality. Projects with low reserves, resulting from major recent work, are not necessarily of less value than similar ones that have higher reserves, but which face sizeable imminent repairs. Also, the reserve fund is an asset of the corporation. As such, it’s part of the value package purchased by subsequent owners, and not subject to adjustment.

RESERVE FUND STUDIES

Section 23 of the Condominium Property Regulation states that every board must retain a **qualified person** to carry out a study of the depreciating property of every condominium.

The purposes are to determine: an inventory of all of the depreciating property that, under normal circumstances of use, may need to be repaired or replaced within the next 25 years; 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; the estimated costs of repairs to or replacement of the depreciating property; and the life expectancy of each component of the depreciating property once that property has been repaired or replaced.

The *qualified person* must also: determine the current amount of funds, if any, included in the corporation’s reserve fund; recommend the amount of funds, if any, that should be included in or added to the corporation’s reserve fund in order to establish and/or maintain the fund; and, describe the basis for determining the respective amounts.

The person who carries out the study must prepare and submit to the board a **reserve fund report** in writing in respect of the study. And, on receiving the reserve fund report, the board must, after reviewing the reserve fund report, approve a reserve fund plan under which a reserve fund is to be established, if one has not already been established, and set forth the method of and amounts needed for funding and maintaining the fund.

The reserve fund plan must provide that sufficient funds will be available by means of owners’ contributions to repair or replace the depreciating property. But, the corporation must provide the owners with copies of the approved reserve fund plan prior to the collection of any funds.

Besides the findings and other matters considered relevant, the report must state the qualifications of the person carrying out the reserve fund study and 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.

For condominium communities of not more than 12 units, the corporation may itself carry out the functions of a qualified person, if authorized to do so by a special resolution.

CONDOMINIUM INSURANCE

As a condominium owner, how do you protect your investment against damage, loss, and liability? Two ways — collectively through the condominium corporation's insurance, and individually through your unit policy.

The *Condominium Property Act* requires every condominium corporation to place and maintain a "master policy" over the units, other than improvements made by the owners, and the common property. It requires protection against loss resulting from destruction or damage caused by any peril described by the regulations. And, the policy must be for full replacement value, subject to any reasonable deductible agreed to by the board and the insurer.

The perils detailed by the regulation are:

- fire;
- leakage from fire protection equipment;
- lightning;
- smoke;
- windstorm;
- hail;
- explosion of natural, coal, or manufactured gas;
- water damage caused by flood;
- water damage caused by sewer back-up or sudden and accidental escape from systems or a domestic appliance;
- impact by air/water/land vehicles;
- riot, vandalism or malicious acts; and
- any others required by by-law.

Since a condominium corporation is a legal entity, it can be sued. So, every project must have liability policy. The Act now requires the corporation to place and maintain insurance against corporation, board and officer liability for action or omission with respect to carrying out their functions, liability for breach of duty as occupier of the common property, and liability arising from ownership, use, or operation of machinery, equipment, pressure vessels and vehicles.

Also, corporation assets in the form of operating and reserve funds should be protected against defalcation by a fidelity bond. The bond should be purchased in the name of the corporation and, if possible, include the property manager and its employees as named insureds.

UNIT-OWNER POLICIES

To protect against property loss, personal liability and disaster expenses, every condominium owner should purchase unit-owner insurance. Corporation "master" policies do not include coverage for owners' personal effects. The insurance industry has responded to this need by creating a condominium unit-owner policy.

Such coverage usually offers all-risks protection against an owner's "personal property" loss from fire, theft, and vandalism. Items covered include furniture, clothing, household appliances, hobby equipment, tools, and just about every other chattel associated with daily life. The policy likely also applies to goods on or away from the premises temporarily. Liability coverage, in the case of claims for injuries to persons or damage to the property of others, is also a standard feature.

Another important component is contingency coverage for an owner's share of the costs of repairing damage to common property, or of liability for claims against the corporation. This would apply in the event the condominium's master policy is inadequate. If an owner's unit becomes uninhabitable due to insured damage, the additional living expenses involved are also normally covered.

Unit-owner *improvement and betterment* coverage provides replacement cost protection for damage to upgrades made by the owner. To ensure proper overlap of individual and master coverage, owners should review the corporation's by-laws and insurance policy summary. If the corporation and owner both place insurance on the same subject matter, the corporation policy is usually deemed to be first-loss (primary) insurance and the unit-owner policy excess coverage.

MUNICIPAL TAXES

Like traditional-house buyers, condominium purchasers are land owners. So, they must pay their fair share of municipal taxes. Land title systems can clearly identify and describe any land parcel, including the air-space that each parcel delineates (referred to as "volumetric ownership"). The costs of operating and servicing a municipality are, therefore, assessed according to equitable appraisal of the value each title contributes to a municipality's total real-property wealth.

When a condominium plan is registered with a land title office, the original title is canceled. It's replaced in the same instant with a defined number of new titles — each comprising a single unit plus a proportionate share in every part (land, structure, and air-space) that is not a unit.

Each unit and its share in the common property constitutes a separate parcel of land and improvements. Ownership of the common property is distributed among individual owners according to *unit factor* in Alberta. Consequently, the common property does not constitute a separate parcel of land or improvements.

FREEHOLD versus LEASEHOLD versus LIFE-LEASE

Most Alberta condominium is on fee simple, freehold title (permanent ownership). Leasehold condominium is permitted; but, except in the National Parks, applications are rare. Unlike British Columbia, where the lessor must be the Crown or a public authority, Alberta has no such restriction. Nor does it have British Columbia's unique features for lessening the ultimate no-equity reversion of the property to the lessor. The B.C. *Strata Property Act* allows for growth of unit-lessee equity that must be computed and compensated if the ground lease is not renewed.

Although technically not leasehold condominium, *life-lease* tenure has proven to be a popular alternative. Instead of title, life-lease purchasers take back a mortgage from the developer — who is typically aligned with a prominent community organization. Instead of interest on funds advanced, investors occupy their homes rent free. When the unit is no longer needed, the mortgage investment is returned.

CONDOMINIUM versus CO-OPERATIVES

Before condominium statutes were enacted, traditional real-property concepts didn't support a title system that offered exclusive ownership to private spaces within a multi-unit complex. Consequently, other multiple-ownership arrangements were employed to provide equity participation to those who preferred the advantages of shared premises. What has come to be known as the stockholder, or shareholder, co-operative was a popular vehicle.

By incorporating a private company, and attaching proprietary leases to the stock, shareholders were able to secure equity in their residences and protect themselves from inflation. Since the investor in such an arrangement does not hold a direct-to-the-land interest, but a corporate investment, the system has disadvantages. It is the private corporation, an artificial person interposed between the investor and the property, that mortgages the single title and receives the single tax assessment.

To meet these and other obligations, the co-owners contribute their proportionate shares. However, in the event of individual delinquency or default, the corporation must meet the shortfall from its own resources, or those of other shareholders. In contrast, condominium-unit financing and tax bills are the sole liability of individual owners. Since the corporate arrangement appeared so different from traditional house ownership, it was called, for want of a better term, a *co-operative*. As most know, the word has other established usages.

Generally, the term refers to an organization that provides collective services, but not equity gain, to its members. Consumer, purchasing, marketing, and financial co-operatives are common examples. In housing, certain non-profit, rental projects also share the designation "co-operative". To distinguish between these two forms of tenure, the equity shareholder version is often referred to as a "market co-operative" — the rental form as "non-market".

PURCHASE AND SALE

BUYING CONDOMINIUM

Buying and financing a new or used condominium residence is not much different from that of a non-condominium home. Purchasers develop an image of the location, style, size, layout, amenities, and nearby services which most fit their needs. Then, with or without a realtor, they research the marketplace; examine the available selection; develop an appreciation of existing values; identify the value factors that are essential; make trade-offs and adjustments in other criteria; decide to offer; and, hopefully, conclude a purchase that best satisfies their requirements and budgets.

If they cannot, or do not wish to, pay the full price from personal funds they will likely negotiate a mortgage loan. Like any home purchase, ownership of a condominium unit plus its proportionate share in the common property is an estate in land. Land Titles will issue a title and register mortgage documents and other instruments associated with standard real estate investments.

Procedures for assessing a lender's risk and security are basically the same as with non-condominium residences. The property is appraised, loan-to-value criteria are applied, and the borrower's ability to repay the loan is verified. If all criteria are acceptable, the lender will advise the borrower of its commitment to extend the funds. Usually, anticipated rate shifts and personal financial-planning objectives play an important role in a purchaser's decision regarding an appropriate mortgage term and rate, and an associated amortization period.

The **mortgage term** is the period for which the funds are committed at a particular rate (i.e., one, three, five, or whatever years). Possibly the same as the term but usually much longer, the **amortization period** is the time over which a mortgage would reduce to zero at the current interest rate. Most importantly, it determines the amount of principal reduction included in every regular payment.

The **interest rate** for a particular term reflects availability of funds in the market.

Condominium mortgages will, however, usually provide for the following:

- 1) Special obligations of the condominium corporation with respect to insurance coverage — i.e., the duty to insure for replacement value;
- 2) Failure to make prompt condominium fee payments constitutes default;
- 3) Failure to comply with the Act and the By-Laws also constitutes default;
- 4) Full or partial assignment (if necessary) of the borrower's voting rights.

CONVENTIONAL & HIGH RATIO

Banks and trust companies have limits to the amount they may lend without the security of mortgage insurance. Federal legislation states that this amount cannot exceed 75% of the lower of the purchase price or appraised value. Applicable to both condominium and non-condominium properties, this standard uninsured loan is referred to as a **conventional mortgage**.

If a purchaser needs an institutional mortgage greater than 75%, mortgage insurance protecting the lender against loss from default must be purchased by the borrower. **High-ratio** mortgages are ordinarily available up to 90% of the lower of the price or appraisal, and even as high as 95% under the current First-Time Buyers Program.

The mortgage insurance fee is 1) computed as a percentage of the loan, 2) collected by the lender from the borrower (either directly or by adding it to the mortgage), and 3) paid to the insurer who contracts to indemnify the lender.

Qualifying procedures for a condominium mortgage are similar to those of conventional homes. But, since condominium buyers acquire a co-ownership share in common property, they are required to contribute to operational costs. So, a portion of the monthly "condominium fee" is also included in calculating the *Gross Debt Service Ratio (GDS ratio)* and the *Total Debt Service Ratio (TDS ratio)*.

Lenders justify this extra component because it is a required regular payment. Of course, owners of traditional houses have most of the same costs covered by the "condo fee" — maintenance, insurance, heat, hot water, etc. But, because the financial well-being of the whole project depends upon timely payment, condo owners cannot allow themselves the privilege of deferring these expenses.

GDS RATIO

MORTGAGE PAYMENT
+
PROPERTY TAXES
+
HEATING COSTS
+
SECONDARY FINANCING
+
50% CONDOMINIUM CONTRIBUTION



TOTAL GROSS MONTHLY INCOME

Must Be Less Than or Equal to 32%

TDS RATIO

MORTGAGE PAYMENT
+
PROPERTY TAXES
+
HEATING COSTS
+
SECONDARY FINANCING
+
50% CONDOMINIUM CONTRIBUTION
+
OTHER OUTSTANDING DEBT



TOTAL GROSS MONTHLY INCOME

Must Be Less Than Or Equal To 40%

Of course, in apartment projects — versus townhomes with their own heating, hot water, and other private utilities — adjustments are made to avoid double counting of services already included.

COMPARISON & CHOICE

Once you've made the decision that the economic, lifestyle, security, and controlled environment advantages of condominium most fit your housing needs, you should approach the available market with organized preparedness.

Of course, the object of your search is to acquire the most value for your money. But, that should not mean just any property in your price range that you can buy at the lowest price in relation to perceived market value. More importantly, you should receive the highest proportion of value factors that matter most to you — that give you the most day-to-day use, comfort, and enjoyment for your investment.

An effective, systematic approach for evaluating individual properties and comparing possible purchases is described on the following pages. Its purpose is to help you clearly identify and prioritize features that are 1) essential, and 2) desirable — so that no important value factor is overlooked.

The focus of the exercise is to maximize both your investment and residential satisfaction, and to minimize the likelihood of buying features that are of little or no importance to you. Since condominium often provides owners with shared amenities, if features aren't essential, why buy them and their ongoing upkeep? Properties offering the most important value factors can then be more closely examined for their condition, maintenance, and management standards.

PROPERTY EVALUATION WORKSHEET

RATING
 Excellent
 Good
 Fair
 Poor

ESSENTIAL FEATURES

- 1) _____
- 2) _____
- 3) _____
- 4) _____
- 5) _____
- 6) _____

PERSONAL VALUE FACTORS

- | | | | |
|----------------------|--|-------------------|---|
| LOCATION | - City Quadrant
- Urban/Suburban | STYLE | - Apartment
- Townhouse
- Bungalow |
| PROXIMITY | - Work
- Recreation
- Public Transit
- Highways
- Shopping
- Parks
- Hospitals
- Schools
- Entertainment | PROJECT | - Size
- Age
- Amenities
- Orientation
- Adult
- Family
- Owner Occupancy
- Policies
- Guests
- Pets
- Management
- Professional
- Self |
| NEIGHBOURHOOD | - New
- Mature
- Transition
- Renewal | INVESTMENT | - Stability
- Potential
- Rental |
| PRICE RANGE | - Options | | |

PROPERTY EVALUATION WORKSHEET

RATING
 Excellent
 Good
 Fair
 Poor

DESIRABLE FEATURES

- 1) _____
- 2) _____
- 3) _____
- 4) _____
- 5) _____
- 6) _____

PERSONAL VALUE FACTORS (continued)

- | | | | |
|-------------|---|---------------------|---|
| UNIT | - Size
- Location
- Position
- Orientation
- Floor Level
- View
- Layout
- Apartment
- Multi-Level
- Loft
- # of Bedrooms
- Closets
- # of Baths
- Fixtures
- Fireplace
- Appliances
- Floor Coverings
- Ensuite Laundry
- Formal Dining Room
- Storage
- Air conditioning
- Overall condition | CONSTRUCTION | - Concrete
- Wood Frame |
| | | SERVICES | - Elevator
- Security
- Cable
- Resident Manager
- Guest Suite
- Clubhouse
- Exercise Room
- Pool/Tennis
- Parking
- Underground
- Visitor
- Snow Removal
- Garbage |
| | | MAINTENANCE | - Overall standard |
| | | RESERVES | |

CONDOMINIUM CONTRIBUTIONS (Condo Fees)

The role of the condominium fee is often misunderstood. Firstly, “fee” is a misnomer. The official term is *contribution* — reflecting the fact that it is the proportionate cost-share each owner must contribute to operating the common property and administering the condominium corporation. As such, it goes toward meeting the costs associated with any real property — repair, maintenance, insurance, etc. The “fee” compensation that professional management receives for its administration services is normally but a small part of the expense budget.

Similar style projects with similar scope and amenities should have similar monthly costs to operate. If significant differences exist, budgets should be compared to identify either overspending, or more likely underspending, in important areas. A unit-owner’s obligation to pay assessed contributions is fundamental to the condominium community’s financial security. If a delinquency develops, the corporation has the right to file a *caveat* on the unit title, warning prospective purchasers of the debt.

If you fall into this unfortunate situation as an owner, remember that the caveat may be enforced in the same manner as a mortgage. The corporation may also charge interest on any unpaid amount at a rate no greater than that provided by regulation, and all reasonable costs, such as legal fees and enforcement expenses, that may be incurred in collecting the amount owed.

If a contribution is not paid by an owner, the mortgagee may pay the amount due to the corporation and add it to the outstanding mortgage. If the unit is rented, the board has the power to require the tenant to pay the rent owing for application against the arrears, and the tenant is deemed to have paid the rent to the owner.

Once a caveat is filed, it will remain registered against the title even after a foreclosure, an action for specific performance, or a public action.

NON-COMPLIANCE SANCTIONS

Corporations may by by-law impose monetary and other sanctions on owners, tenants and invitees of the owners or tenants who fail to abide by the by-laws.

Any such by-law must define the sanctions to be imposed and the applicable amount or range of monetary sanctions. Any sanction must be reasonable in the circumstances. Sanctions may not, however, prohibit or restrict the transfer, lease, or mortgage of units, or destroy or modify any implied or created easement.

If the person fails to abide by or pay the sanction, for enforcement the corporation may take proceedings to the applicable Court and establish to its satisfaction that the breached by-law was properly enacted and contravened as alleged.

Boards pursuing such actions are subject to the “honesty and good faith” obligations and the “improper conduct” provisions of the Act.

DISCLOSURE PROTECTIONS

NEW CONSTRUCTION & CONVERSIONS

The Act defines “developer” as any person who, alone or with others, sells or offers to sell residential units that **have not previously been sold to the public by means of an arm’s length transaction**. And, it imposes on the developer and the purchaser alike a duty of **fair dealing** with respect to entering into, performance and enforcement of any sales agreement.

Purchasers of new or conversion condominium units in Alberta are protected by extensive disclosure requirements. The **Condominium Property Act** directs developers entering into sales contracts to deliver copies of important current or proposed documents.

Documents include the purchase agreement, registered or proposed condominium plan, registered or proposed by-laws, concluded or proposed management and recreational contracts, and any lease or mortgage that may affect the property. The agreement must also include descriptions, drawings, or photographs of all interior and exterior improvements to be completed, plus any equipment to be supplied.

Statements of the estimated unit contribution (condo fee), based on a reasonable economic basis for that unit, and the amount and computation basis of the assigned **unit factor**, and the basis of unit factor apportionment for all units comprised in the plan, are also required.

Purchasers have 10 days from receipt of the documents to examine and accept them, or rescind the agreement without liability. Notice of this condition must be prominently displayed on the front cover or on the first page of the purchase agreement. The developer or agent must hold money paid against the purchase price **in trust** — deposited without unreasonable delay into an interest bearing account in a bank, treasury branch, trust company, or credit union in Alberta.

When improvements to the unit and the common property are substantially complete, the money is paid to the developer on delivery of title. However, if the unit is not substantially completed, and/or the related common property isn’t, the developer must hold back in trust pending completion the amount of money sufficient for either or both as determined by a cost consultant.

Condominium plans that are developed in phases are subject to extensive supplementary regulation and disclosure obligations. The **Phased Disclosure Statement** must include a description of the phases, the maximum and minimum number of units in the project, a description of the units and common property in the first and each subsequent phase, including number of units (maximum and minimum), general size of units in each, the extent and description of common property in each phase, and restrictions, qualifications proposed usage on units and common property.

Further obligations deal with proposed physical appearance of phases, common property completion and availability, developer contribution to common expenses, allocation of administrative expenses, basis for consistent unit factor allocation, and the effect on contributions if future phases are delayed or cancelled.

With conversions, other protections for both purchasers and tenants apply. The owner of a building may only sell or agree to sell units prior to registration of a condominium if it is a condition of the agreement that the plan be registered before the purchaser is obliged to take possession. Also, the *Residential Tenancies Act* requires an owner who wishes to convert a building to condominium to give existing tenants 180 days notice.

New construction buyers are usually protected by a home warranty. The Alberta New Home Warranty and the National Home Warranty programs offer one year materials and workmanship coverage — with a further four years on major structural components.

RESALE

The *Condominium Property Act* does not directly impose disclosure requirements upon private vendors and resale brokers. However, Section 44 states that:

On the written request of an owner, purchaser or mortgagee of a unit the corporation shall, within 10 days of receiving that request, provide to the person making the request one or more of the following as requested by that person:

- (a) *a statement setting out the amount of any contributions due and payable in respect of a unit;*
- (b) *the particulars of*
 - (i) *any action commenced against the corporation and served on the corporation,*
 - (ii) *any unsatisfied judgement 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 any subsisting recreational agreement;*
- (e) *the particulars of 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 most recent financial statements, if any, of the corporation;*
- (h) *a copy of the by-laws 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.*

Section 39 of the Act requires the corporation to give authorized persons *estoppel* certification of the contribution amount, manner of payment and status of a unit's account.

Member boards of the *Alberta Real Estate Association* incorporate these and other purchaser protections in their standard Purchase and Sale Contract.

IMPROPER CONDUCT

Revisions to the Act in 2000 introduced relief and remedy procedures to any interested party — owner, board member, employee, corporation, or developer — for alleged non-compliance with the Act, the regulations, or by-laws by any other party.

As well as any clear non-compliance, “improper conduct” is characterized as:

* Conduct of the business affairs of the corporation in an oppressive and prejudicial manner or unfairly disregarding another parties interests;

* Exercise of board powers in an oppressive or prejudicial manner;

* Business conduct or exercise of board power by a developer that is oppressive or unfairly prejudicial.

Upon application to, and satisfaction of, the Court regarding such conduct, the Court may either appoint an investigator, direct the conduct to cease, award costs, or give any other directions it considers appropriate.

CONDOMINIUM RENTALS

Investors often buy condominium units, both residential and commercial, because of the relatively secure and hassle-free rental income they provide. Most times, however, residential units are leased to tenants by owners who either 1) are away from the area for an extended, but temporary, time period, or 2) do not find it attractive to sell the investment immediately upon acquiring another home.

Alberta's *Condominium Property Act* recognizes that when an owner leases a unit, he or she is also leasing access to and use of the common property. Consequently, the condominium community is given statutory power to assure that its interests are considered and properly protected.

A tenant takes the place of an owner within the community. Therefore it's essential that house rules and restrictions, which all residents are required to observe, are properly communicated. These rules form part of the by-laws, and are a contract between the owners and their corporation. The Act states that an owner shall not rent his or her unit until written notice is given to the condominium corporation of 1) the intention to do so, 2) the owner's subsequent address for service, and 3) the amount of rent to be charged.

Many by-laws contain a clause stipulating that, in the event an owner desires to rent his unit, an undertaking in satisfactory form must be provided to the corporation. Signed by the proposed lessee, it usually states that the tenant will comply with provisions of the Act and the corporation's by-laws. Furthermore, it likely affirms that the owner is in no way released from his obligations and will be jointly and severally liable with the proposed lessee with respect to all by-law obligations.

To provide security that community standards are observed and financial claims may be offset, the Act permits the corporation to require:

"an owner who rents his residential unit to pay and maintain with the corporation a deposit that the corporation may use for (a) the repair and maintenance of ... property of the corporation or the common property, or b) the maintenance, repair or replacement of any common property ... that is damaged, lost or removed ... by a person residing in or on the rented unit".

The deposit may not exceed one month's rent. This amount corresponds with the maximum permitted a lessor under the *Residential Tenancies Act* — essentially directing transfer of the deposit to the condominium corporation.

Information & Organization Directory

The organization of condominium, professionals, boards, and owners is the:

Canadian Condominium Institute - CCI

South Alberta Chapter

1B - 1640 16th Ave. NW
Calgary, Alberta T2M 0L6
Tel: (403) 253-9082

North Alberta Chapter

Box 777
Edmonton, Alberta T5J 2L4
Tel: (780) 413-8334

Several times yearly both chapters offer a series of 15-hour management courses for boards and professionals

The licencing and regulatory authority for real estate brokerage in Alberta is the:

Real Estate Council of Alberta - RECA

340 - 2424 4th St. SW
Calgary, Alberta T2S 2T4
Tel: (403) 228-2954
Fax: (403) 228-3065

The professional association of real estate agents and salespersons is the:

Alberta Real Estate Association - AREA

310 - 2424 4th St. SW
Calgary, Alberta T2S 2T4
Tel: (403) 228-6845
Fax: (403) 228-4360

Member Boards

Cold Lake/Bonnyville Real Estate Board
2nd Floor, 4817 52nd St.
Cold Lake South, Alberta T9M 1P1
Tel: (780) 594-5958
Fax (780) 594-3181

Brooks Real Estate Board
Box 997
Brooks, Alberta T1R 1B8
Tel: (403) 793-2001
Fax (403) 362-9033

Calgary Real Estate Board
300 Manning Road NE
Calgary, Alberta T2E 8K4
Tel: (403) 263-0530
Fax: (403) 265-9869

Edmonton Real Estate Board
14220 - 112th Avenue
Edmonton, Alberta T5M 2T8
Tel: (780) 451-6666
Fax: (780) 452-1135

Fort McMurray Real Estate Board
9909 Sutherland St.
Fort McMurray, Alberta T9H 1V3
Tel: (780) 791-1124
Fax: (780) 743-4724

Grande Prairie Real Estate Board
10106 - 102nd Street
Grande Prairie, Alberta T2V 2V7
Tel: (780) 532-4508
Fax: (780) 539-3515

Lethbridge Real Estate Board
522 - 6th Street South
Lethbridge, Alberta T1J 2E2
Tel: (403) 328-8838
Fax: (403) 328-8906

Lloydminster Real Estate Board
#203, 5009 - 48th Street
Lloydminster, Alberta T9V 0H7
Tel: (780) 875-6939
Fax: (780) 875-5560

Medicine Hat Real Estate Board
403 - 4th Street SE
Medicine Hat, Alberta T1A 0K5
Tel: (403) 526-2879
Fax: (403) 526-0307

Red Deer & District
Real Estate Board
4922 45th Street
Red Deer, Alberta T4N 1K6
Tel: (403) 343-0881
Fax: (403) 347-9080

West Central Alberta
Real Estate Board
162 Athabaska Ave. (Foothills Building)
Hinton, Alberta T7V 2A5
Tel: (780) 865-7511
Fax: (780) 865-7517

The organization of professional condominium managers is the:

Association of Condominium Managers of Alberta — ACMA

1 - 6125 12th St. SE
Calgary, Alberta T2H 2K1
Tel: (403) 205-3550
Fax: (403) 269-9908

Copies of the *Condominium Property Act and Regulation* are available from:

Queen's Printer
Province of Alberta

Calgary

John J. Bowlen Building
602, 620 - 7th Avenue SW
T2P 0Y8
Tel: (403) 297-6251

Edmonton

Main Floor, Park Plaza
10611 - 98 Avenue
T5K 2P7
Tel: (780) 427-4952

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