



PRESENTS

CONDOMINIUM LIVING: AN OVERVIEW



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LIVING IN A CONDOMINIUM

OVERVIEW ON CONDOMINIUM LIVING

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INTRODUCTION

Many new condominium homeowners are overwhelmed by the documentation that they receive from their lawyers. We urge you to take the time to read the documents that you receive from your lawyer on closing, as they are extremely important to your success as a condominium owner.

The single most significant information we can impart is that there is a vast variation in services directly related to the type of Condominium Corporation registered. As an example, there are Standard Condominium Corporations and Common element Condominium Corporations. The standard condominium corporation provides the most services, generally looking after repairs to exterior features such as brick/siding; basement walls etc. as well as looking after the exterior maintenance of the grounds i.e. grass cutting, snow plowing etc. Naturally, the fees for this type of condominium service are considerable whereas a Common Element Condominium Corporation may only be obligated to look after the winter maintenance of the roadway and provide for the long-term replacement of same. The fees associated with this type of ownership are nominal as the owner is responsible for all maintenance and repair of the unit and normally owns the property to and including the roadway curb. When the terms normally and generally are applied, it is because the specific documents need to be applied as registered to determine responsibilities.

The foregoing provides only a brief synopsis of the variation of types and services encountered. Traditionally, condominium corporations could not be registered until 50% were sold. In 2001, the Act was revised and phased in corporations were permitted. This legislation allows a developer to register a corporation in phases, which in turn permits him to close sales sooner, thereby reducing the impact of his financial outlay. The twofold function is that this also allows the purchaser to attain title to the property sooner thus reducing the rental period; the cost of which is not applied to the purchase price.

This handbook has been compiled to assist each homeowner towards a better understanding of condominium living. We have included information starting from What A Condominium is through to, "Do's and Don'ts."

This overview is not intended to replace any legal documentation, but to give a brief synopsis of what condominium living entails.

We hope that the information enclosed will provide helpful, useful and enjoyable reading for you. We welcome you to your new home and community

I'VE JUST BOUGHT A CONDOMINIUM, NOW WHAT?

Congratulations on the purchase of your new condominium home. Once having completed and signed the Agreement of Purchase and Sale, the developer should have provided you with a copy of the disclosure statement and a copy of the agreement that you have just signed.

WHAT IS A DISCLOSURE STATEMENT?

The disclosure statement includes, amongst other things, a brief description of the significant features of the condominium, a summary of the proposed declaration, by-laws and rules, a schedule of the proposed completion dates of construction and a budget statement for the year immediately following registration.

WHAT IS REGISTRATION?

Registration occurs when the developer registers a declaration and description with the local land registry office, creating a Corporation without share capital whose members are the owners from time to time. The land registrar will assign a name to each Corporation, for example **(WENTWORTH STANDARD CONDOMINIUM CORPORATION)** followed by the next consecutive number on the registry, in accordance with the regulation; e.g. (if the previously registered corporation is numbered 912, then the next consecutive number is assigned as WSCC NO. 913).

WHAT IS TURNOVER?

After the developer has registered the Corporation and it is now an existing condominium Corporation, the Declarant will be the registered owner of all the units, even though he/she may have entered into agreements of purchase and sale. The developer will then elect a Board of Directors and will then begin registering transfers of title to the units, to the purchasers. This procedure is known as "closings". The board appointed by the developer must call an owners' (turnover) meeting by the latter of the thirtieth day after the developer transfers title to twenty percent of the units and the ninetieth day after the developer transfers title to the first unit. A turnover meeting must be called to elect a new Board of Directors, which will consist of persons who are:

Not undischarged bankrupts,

Mentally competent,

At least eighteen (18) years of age.

The By-laws of individual Corporations may impose further qualifications and/or restrictions. The meeting must be held within 21 days after it is called by the developer's board and, if it is not, any owner or mortgagee may call the meeting.

WHAT HAPPENS AT THE TURNOVER MEETING?

The Condominium Act 1998, 43 (4) sets out what the Declarant is obligated to turnover to the newly elected Board. Depending on the item, the Declarant must either turn over the items at the meeting and/or within 30 days after the meeting. The Corporation shall receive such items as the registered Declaration, By-laws, rules, Corporate seal, copies of all signed agreements, a record of unit owners and mortgages, warranties, guarantees, plans, unaudited financial statements, etc.

NOW WE ARE REGISTERED, THEN WHAT?

You are now officially the owner of your new condominium home. It is important to know what the Corporation is all about and what you can and cannot do, including whom you must go to for permission. We will start with the basics...

WHAT IS A CONDOMINIUM?

A Condominium is a group of "units" to which individual owners hold registered title. A condominium owner holds title to his/her own unit and at the same time, shares with other owners, an interest in the balance of the property constituting the condominium.

WHAT IS A CONDOMINIUM CORPORATION?

A Condominium Corporation is a legal entity created by registering a description and declaration with the appropriate Land Registry Office. The Condominium Corporation consists of two parts; the units and the common elements, as outlined in the Declaration. The Condominium Act, 1998 (the "Act") governs condominium ownership.

ABOUT THE CONDOMINIUM ACT

The Act takes precedence over the condominium documents and over all agreements, where a conflict arises.

THE BOARD OF DIRECTORS

At the turnover meeting, the Board of Directors is elected. Boards consist of a minimum of three (3) people and can increase to five (5), seven (7), or more, based on what is contained in the By-laws. The number of directors can be either increased or decreased (not less than 3 members) by passing a By-law. As elected representatives of the owners, the Board takes the responsibility for managing the condominium Corporation's property and business affairs. The board of directors is obligated to enforce the Act and the condominium documents (Declaration, By-laws and Rules).

WHAT IS A DECLARATION?

The Declaration deals with certain basic aspects of the Corporation and outlines what constitutes the division of ownership within the Corporation by detailing the common elements, the units, the percentage ownership each owner has in the common elements, common expense proportions and creation of exclusive use common elements. In most circumstances, the declaration cannot be changed without the consent of 80 to 90% of all owners and mortgages, depending on the type of change.

WHAT ARE BY-LAWS?

The by-laws are usually registered by the developer and indicate how the Corporation will be organized. The by-laws deal generally with the Board of Directors and the manner in which they govern the condominium. By-laws are passed by the Board of Directors and require approval of more than 50% of the owners at an Annual General Meeting or a meeting specifically called for this purpose and they then must be registered with the local land registry office in order to become effective.

WHAT ARE RULES?

Rules relate to the use of common elements and units to promote the safety, security and welfare of the owners and of the property, and to prevent unreasonable interference with the use and enjoyment of the Common Elements and Units. Rules are passed by the Board of Directors and do not require approval of the owners. Rules become effective thirty (30) days after notice of the rule has been given to each owner, unless during that period the Board of Directors receive a written requisition signed by the owners of at least 15% of the units requiring a meeting of the owners to consider amending the said rule(s).

WHAT IS A UNIT?

Each Corporation is divided into units and common elements. The boundaries of the units are detailed in the Declaration and description registered at the time the condominium was created.

WHAT ARE COMMON ELEMENTS?

The common elements are those parts of the condominium outside of the individual units, including the outside shell of the unit.

WHAT ARE EXCLUSIVE COMMON ELEMENTS?

Areas known as exclusive use common elements are generally maintained by the unit owner and the Declaration clarifies this responsibility. Exclusive use common elements are common elements, which are restricted in use to an individual resident. Lawns and driveways in townhouse communities are a few examples of what can be exclusive use. These items will vary from Corporation to Corporation. However, they are clearly depicted in the registered Declaration and description for your Corporation.

CAN I WITHHOLD MY PAYMENT OF COMMON EXPENSES?

An owner is legally bound to pay monthly common expenses, regardless of whether such owner is happy or not with the maintenance or services being performed by the Corporation. If you do not pay your common expenses, the Corporation must register a lien against your unit for the amount owing, as well as the interest and legal costs incurred to collect same. Your mortgagee may pay the arrears and add them to your mortgage payments. If your mortgagee does not pay the arrears on your behalf, the Corporation can sell your unit and collect what is owing from the proceeds of the sale.

WHAT IS A LIEN?

A lien is a claim or charge against property for the payment of a debt or obligation. The key provision in the Act is that a lien may be enforced in the same manner as a mortgage. This means the Corporation can take steps to sell the unit or foreclose, due to the failure of the owner to fulfill his/her obligation of payment. The lien covers not only the unpaid common expenses, but "all reasonable costs, charges and expenses incurred by the Corporation in connection with the collection or attempted collection of the unpaid amount".

HOW DO I PAY MY COMMON EXPENSE?

Common expense fees are due and payable by the owner to the Corporation on the first (1st.) day of each month. The owner is responsible to ensure that the funds are received by the Corporation and/or their property manager by the 1st. Owners can make payments in several different ways:

issue a series of twelve post-dated cheques to cover the fiscal period, pay by pre-authorized debit from a bank account, or pay the total amount in full, in advance.

Most Corporations will charge an owner an administration fee for any returned cheques or returned pre-authorized debits. Pre-authorized debits are generally canceled if an owner's payment is returned twice in a row. The owner is then responsible to provide guaranteed funds (certified cheque or money order) for the next six-month period to re-establish a good credit rating. At that time, the pre-authorized debit will be reinstated. Two weeks notice, prior to the first of the month, is required to start or stop a pre-authorized debit from a bank account.

WHAT IS A BUDGET?

The budget is a statement, which is prepared in advance of each fiscal year and approved by the board of directors and includes any expected fees or changes to be paid by the unit owners for the maintenance, repair and upkeep of the common elements.

The budget generally includes costs for contracts (landscaping and snow removal, property management), cost for insurance, costs for auditors, lawyers and engineers, a reserve fund provision, etc. The budget does not require the approval of the unit owners.

WHAT ARE REPAIR AND MAINTENANCE ITEMS?

The Act states that the Corporation is responsible for repairs to the units and common elements after damage and shall maintain the common elements. Each owner is responsible to maintain his/her unit. The Act further requires the Corporation to make any repairs to a unit that an owner is obligated to make but does not make within a reasonable period of time. The cost of those repairs can be added to the owner's common expenses and collected in the same manner, i.e. a lien can be registered on the unit for non-payment. Repair and maintenance items are generally depicted in the registered Declaration, along with who is responsible for what.

WHAT AM I RESTRICTED FROM DOING TO/IN MY UNIT?

An owner must abide by all the provisions of the Act, the Corporation's Declaration, By-laws and Rules. Every Condominium Corporation has varying restrictions, which are set out in the Declaration, and By-laws specific to your Corporation. These restrictions never contradict Federal, Provincial or Municipal By-laws.

Some examples of restrictions are:

- No owner may damage or neglect his/her unit which could depreciate the value of the units as a whole;
- In residential units, they can only be used as single family dwellings, as per City by-laws;
- Owners are generally forbidden from any actions that could cause or threaten the insurance coverage for the Corporation;
- Owners may be restricted to the color of the window coverings allowed on the exterior face of the unit;
- Owners may be restricted as to the number, if any, of pets allowed in the unit;
- Owners may be restricted as to the installation of satellite dishes or antennas;
- When in doubt, call the office and ask first.

WHAT IS A SECTION 98 AGREEMENT?

As of 2001, the Act provides that any common element alterations are subject to a Section 98 Agreement. This agreement provides against liability or maintenance to the corporation for any change that the Board may authorize on behalf of the membership. A written agreement must be completed, signed and registered at Land Titles for any authorized changes. Further, the Act stipulates that all costs associated with Section 98 Agreements are unit owner costs. **Prior to any authorized changes being made, a written submission by an owner is required to commence the process.**

WHAT IS THE ONTARIO NEW HOME WARRANTY PROGRAM? (NOW KNOWN AS TARION)

This program provides protection for condominium buyers of new units in two ways. It guarantees to the buyers that any deposit made by them, up to a maximum of \$20,000.00, will be returned if the developer is unable to complete the transaction. It also insures the units and common elements for one year against defects in work and materials, for two years against seepage, and for seven years for major structural defects, as defined by the Ontario New Home Warranties Plan Act. The Board of Directors is responsible to ensure that a Performance Audit is performed between the 6th, and 10th, month of the first year and said audit is registered with TARION before the end of the 11th, month in order to have the deficiencies recognized and addressed. **The Corporation is responsible for the deficiencies of the common elements and each individual unit owner is responsible to ensure that they file personal unit deficiency lists with TARION for items that they have found within their own unit. The unit owner's warranty starts on the date of occupancy and the Corporation's warranty starts on the date of registration. Within the warranty time frame, the corporation is unable to address deficiencies for which the developer is responsible.**

WHAT IS A PERFORMANCE AUDIT?

A Performance Audit is an investigation and inspection of common elements. This audit enables the Corporation to determine whether there are any deficiencies in workmanship or material defects from the construction stage. The audit is then registered with the TARON and, if deficiencies are found, negotiations begin to rectify same. The TARION will notify the developer of the said deficiencies and the developer can either repair them, make payment to the Corporation of a sum of money, which is agreed to by both parties as sufficient for said repair, or dispute the claim, at which time conciliation/mediation will begin between the two parties.

WHAT IS A RESERVE FUND?

The condominium Corporation, under the Act, is obligated to collect amounts from the owners, which are reasonable expected to provide sufficient funds for major repair and replacement of **common elements** and assets of the Corporation.

The calculation of reserve fund contributions is usually based upon expected repair and replacement and life expectancy determined by a study carried out by an engineering firm or other experts in the field. These contributions form part of the operating budget established by the Corporation.

DO I NEED INSURANCE AND WHAT TYPE?

Insurance premiums are part of the common expenses as outlined in the budget for the Corporation. The Corporation's insurance, for what is known as a standard corporation, normally covers replacement value of the structures and common elements, boiler and machinery insurance, liability insurance, Director's and officer's liability coverage and bonding. In some cases, under the Standard Unit By-law, the interior of the unit as example floor coverings or cabinetry may not be replaced by the corporation's policy. The corporation policy, as with all insurance policies, contains deductible amounts that are applied against claims. In some instances the deductible may be ascribed to an owner found negligent/responsible for the claim. For this reason it is a good idea for owners to have the corporate deductible limit included under their own insurance policy

All unit owners must ensure that personal insurance policies cover contents and personal property such as furnishings, appliances, jewelry etc. Additionally, the owner's policy must cover such betterments/improvements as (e.g. Decking, storm doors, finished basement family rooms etc.)

In the case of common element condominiums (sometimes known as lot line or freehold condominiums) owners would be wise to check with their lawyers or insurance brokers concerning the insurance coverage that will be needed.

WHAT IS AN IMPROVEMENT OR BETTERMENT?

When an owner purchases a unit, the developer offers upgrade items at an additional cost. These items can vary from appliances, to broadloom (carpeting), kitchen cabinets, finished basements, etc. These types of items are considered to be improvements and /or betterments, which would not be covered under the Corporation's insurance policy. Owners must check their agreements of purchase and sale to establish what improvements/betterments were agreed to and should subsequently be covered by their own policies. The developer will provide the Corporation with the detail of a Standard unit at turnover.

CAN I LEASE MY UNIT AND HAVE A TENANT (S)?

Owners can lease/rent their unit to a tenant(s) and said tenant(s) are subject to the same duties as owners under the Act, the Declaration, By-laws and Rules. The Corporation, or a unit owner can obtain a court order under section 134 of the Act requiring a tenant to perform such duty. If the tenant fails to comply with the order, the Court is empowered to terminate the lease. The Act also requires an owner to notify the Corporation that his/her unit is leased and to provide the tenant's name and the owners address and particulars as per Form 5. Owners must be aware that they may give up their rights to make use of common elements/rec, facilities (swimming pool, gym, sauna, and spa) if their unit is occupied by a tenant. Owners, as per the Act are responsible to provide their tenant(s) with a copy of the Declaration, By-laws and Rules of the Corporation.

WHAT IS AN ANNUAL GENERAL MEETING?

The Act provides that the corporation must hold an annual general meeting of all owners and mortgages not more than six (6) months after the fiscal year end. At the meeting, each owner, provided he/she/ is listed with the Corporation and is on the Corporation's unit register, has a right to vote, unless he/she is in arrears of common expenses for more than thirty (30) day prior to the meeting.

HOW AM I TOLD ABOUT OWNERS' MEETING?

At least fifteen (15) clear days' notice must be given for every meeting of owners, setting out the business to be presented, or such greater notice period as may be provided for in the Corporation's By-laws. The notice must be delivered personally or by pre-paid mail, by fax if the owner has agreed, or to the owners unit or mail box, unless the owner has advised that this is not acceptable or the address of service is different than the unit. The notice must be sent to each owner or mortgagee entitled to vote, as shown on the Corporation's records. Owners representing, in person or by proxy not less than 25% of the units, constitute a quorum and the meeting can be held. Failure to obtain a quorum results in the meeting being canceled and rescheduled for another date. The nature of the business to be discussed must be outlined in the notice of meeting. All voting of owners is based on one vote per unit regardless of the number of registered owners on title to the unit.

WHAT IS A PROXY?

A proxy is a person named by way of written instrument by a unit owner to represent the owner and cast a vote, on his/her behalf, at an owners' meeting. This could include voting at the annual General Meeting to elect directors to the board. **Votes for directors must be indicated on the proxy or the proxy cannot be used for the election of directors.**

WHAT IS A PROPERTY MANAGER?

Most condominium Corporations are run by management firms. The employment of a property manager is a particularly important task for the Board of Directors, since the property manager is generally responsible for the day-to-day operations and administration of the property. Property management firms are usually under contract to the Corporation and this expense is covered by the budget and subsequently paid for through common expenses.

WHAT DOES A PROPERTY MANAGER DO?

The property manager, as the name suggests, takes care of the day-to-day operations and management of the property, as directed by the Board of Directors. The Board usually designates one member of the board, most often the president, to convey the decisions.

Your property manager's duties will include, but are not limited to the following functions: Supervision, planning, assistance, staffing, direction and leadership, maintenance, dealing with trades, budgets, accounting, collections, disbursing common expense money, including a fund set up for the reserve fund allocation and enforcement of the Declaration, by-laws and Rules, reports, etc.