

1977 BILL 55

Third Session, 18th Legislature, 26 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 55

THE CONDOMINIUM PROPERTY AMENDMENT ACT, 1977

MR. HORSMAN

First Reading

Second Reading

Third Reading

Bill 55
Mr. Horsman

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THE CONDOMINIUM PROPERTY AMENDMENT ACT, 1977

(Assented to , 1977)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

1. The Condominium Property Act is hereby amended.

2. Section 2, subsection (1) is amended

(a) by adding after clause (c) the following:

(c.1) “capital replacement reserve fund” means a fund established by a corporation for the purpose of providing money to be used for the maintenance, repair or replacement of

(i) any personal property owned by the corporation, and

(ii) the common property;

(b) by striking out clauses (d) and (e) and by substituting therefor the following:

(d) “common property” means

(i) that part of the real property comprised in a condominium plan that is not comprised in any unit shown in the condominium plan, and

(ii) the real property, if any, acquired and held by a corporation under section 19, subsection (4);

(e) “condominium plan” means a plan that

(i) is described in the heading thereto as a condominium plan,

Explanatory Notes

1. This Bill will amend chapter 62 of the Revised Statutes of Alberta 1970.

2. Section 2, subsection (1), clauses (d), (e), (g) and (k) presently read:

2. (1) *In this Act,*

(d) *“common property” means so much of the land comprised in a condominium plan as is not comprised in any unit shown in a condominium plan;*

(e) *“condominium plan” means a plan that*

(i) is described in the heading thereto as a condominium plan,

(ii) shows the whole or any part of the building comprised therein as being divided into two or more units, and

(iii) complies with requirements of section 7,

and includes a replacement plan registered pursuant to section 9 and a plan of redivision registered pursuant to section 10;

(g) *“local authority” means, in relation to a parcel, the municipal body governing the area in which the parcel is situated;*

(k) *“unit” means an area designated as a unit by a condominium plan;*

(ii) shows the whole or any part of a building comprised therein as being a unit, part of a unit or as being divided into two or more units, and

(iii) complies with the requirements of section 7, and includes a plan of redivision registered under section 10;

(c) by adding after clause (f) the following:

(f.1) “developer” means a person who, alone or in conjunction with other persons, directly or indirectly, sells or offers for sale to the public residential units or proposed residential units which have not previously been sold to the public;

(d) by striking out clauses (g) and (h) and by substituting therefor the following:

(g) “local authority” means

(i) a city, town, new town, village, municipal district or county, or

(ii) the Minister of Municipal Affairs, in the case of an improvement district or a special area,

that governs the municipality in which a parcel is located;

(g.1) “management agreement” means an agreement entered into by a corporation governing the control, management and administration, or any of them, of the common property associated with residential units;

(g.2) “municipality” means the area of a city, town, new town, village, county, municipal district, improvement district or special area;

(h) “owner” means a person who is

(i) the purchaser of the fee simple estate in a unit under an agreement for sale that is the subject of a caveat registered against the certificate of title to the unit, or

(ii) in the absence of a person described in subclause (i), the person registered as the owner of the fee simple estate in a unit,

and in either case includes a person who has a life estate in a unit, notice of which appears on the certificate of title to the unit or in respect of which a certificate of title has been issued;

(e) *by adding after clause (i) the following:*

- (i.1) “purchase agreement” means an interim agreement entered into between a purchaser and a developer for the purchase of a residential unit;
- (i.2) “recreational agreement” means an agreement entered into by a corporation under which the persons residing in the residential units are permitted to use facilities not owned by the corporation;
- (i.3) “residential unit” means a unit used or intended to be used for residential purposes;
- (i.4) “title document” means, in respect of a unit,
 - (i) a transfer of the fee simple estate in the unit that is registrable under *The Land Titles Act*, or
 - (ii) an agreement for sale of the unit, other than a purchase agreement;

(f) *by striking out clause (k) and by substituting therefor the following:*

- (k) “unit” means the space designated as a unit by a condominium plan and defined by reference
 - (i) to floors, walls and ceilings within a building, or
 - (ii) to the roof, exterior walls and foundations of a building,or any combination thereof;

3. Section 3 is amended by striking out subsection (1) and by substituting therefor the following:

3. (1) Where a condominium plan is registered in the manner prescribed by this Act or the regulations, that condominium plan shall, with respect to a building located on the parcel,

- (a) designate that building as a unit, or
- (b) designate that building as part of a unit, or

3. Section 3 presently reads:

3. (1) A Building may be divided into units by the registration of a condominium plan in the manner provided by this Act and the regulations.

(2) For the purposes of The Land Titles Act, a condominium plan shall be deemed upon registration to be embodied in the register.

(3) This Act applies only with respect to land held in fee simple, excepting thereout all mines and minerals.

- (c) divide that building into two or more units.

4. *Section 7 is amended*

- (a) *as to subsection (1), clause (d), by striking out the words “in the building by reference to floors, walls and ceilings”;*
- (b) *by striking out subsection (2) and by substituting therefor the following:*

(2) Where a plan presented for registration as a condominium plan designates units which are residential units, that plan shall, in addition to meeting the requirements of subsection (1), include drawings, satisfactory to the Registrar,

- (a) illustrating all improvements to common property, other than to common property located within a building,
- (b) illustrating the exterior of the building or buildings, as the case may be,
- (c) describing the location of roadways, walkways, fences, parking areas and recreational facilities,
- (d) describing the landscaping and the location of trees, bushes and other planted material, and
- (e) describing the external surface boundaries of any areas which are or may be leased to the owner of a residential unit for that owner's exclusive use.

(3) Where a condominium plan is registered under this section the Registrar shall send a notice of the registration to the local authority of the municipality in which the parcel is located.

5. *The following section is added after section 7:*

7.1. (1) Unless otherwise stipulated in the condominium plan, where

- (a) a boundary of a unit is defined by reference to the floor, wall or ceiling, or
- (b) a wall located within a unit is a load bearing wall,

(4) Notwithstanding subsection (3), where land is held under lease and a certificate of title has been issued under The Land Titles Act in respect of the lease, this Act applies to the land described in the certificate of title, excepting thereout all mines and minerals.

4. Section 7 presently reads:

7. (1) Every plan presented for registration as a condominium plan shall

- (a) delineate the external surface boundaries of the parcel and the location of the building in relation thereto,*
- (b) bear a statement containing such particulars as may be necessary to identify the title to the parcel,*
- (c) include a drawing illustrating the units and distinguishing such units by numbers or other symbols,*
- (d) define the boundaries of each unit in the building by reference to floors, walls and ceilings,*
- (e) show the approximate floor area of each unit,*
- (f) have endorsed upon it a schedule specifying in whole numbers the unit factor for each unit in the parcel,*
- (g) be signed by the owner of the property,*
- (h) have endorsed upon it the address at which documents may be served on the corporation concerned in accordance with section 42, and*
- (i) contain such other features as may be prescribed by the regulations.*

(2) Unless otherwise stipulated in the condominium plan, the common boundary of any unit with another unit or with common property is the centre of the floor, wall or ceiling, as the case may be.

5. Boundaries of condominium units.

the only portion of the floor, wall or ceiling, as the case may be, that forms part of the unit

- (c) in the case of a floor, wall or ceiling consisting of
 - (i) a framework, or
 - (ii) a solid material or a solid material reinforced with reinforcing material,

that has lath and plaster, panelling, gypsum board or other walling material attached thereto, is the lath and plaster, panelling, gypsum board or other walling material and the finishing material attached, laid, glued or applied thereto, and

- (d) in any other case, is the finishing material attached, laid, glued or applied to the floor, wall or ceiling.

(2) Notwithstanding subsection (1), all doors and windows of a unit are part of the unit unless otherwise stipulated in the condominium plan.

(3) Notwithstanding subsections (1) and (2), where a condominium plan was registered prior to the commencement of this section, the common boundary of any unit designated in that condominium plan with another unit or with common property is, unless otherwise stipulated in the condominium plan, the centre of the floor, wall or ceiling, as the case may be.

6. Section 8 is amended

- (a) as to subsection (1), clause (a) by striking out the words “an Alberta land surveyor” and substituting therefor the words “an architect registered or licensed under *The Architects Act* or a land surveyor registered under *The Land Surveyors Act*”,
- (b) as to subsection (1), clause (b) by striking out the words “a registered architect” and by substituting therefor the words “an architect registered or licensed under *The Architects Act* or a land surveyor registered under *The Land Surveyors Act*”,
- (c) as to subsection (1), clause (c) by adding after the words “clerk of the local authority” the words “or of such other person as the local authority may designate”, and
- (d) by striking out subsection (2) and by substituting therefor the following:

(2) Where an application is made under subsection (1), clause (c) for a certificate, the local authority

6. Section 8 presently reads:

8. (1) Every plan presented for registration as a condominium plan shall be endorsed with or accompanied by

(a) a certificate of an Alberta land surveyor that the building shown on the plan is within the external surface boundaries of the parcel that is the subject of the plan and, if eaves or guttering project beyond such external boundaries, that an appropriate easement has been granted as an appurtenance of the parcel,

(b) a certificate of a registered architect that the units shown in the plan are the same as those existing, and

(c) a certificate of the clerk of the local authority that the proposed division of the building, as illustrated in the plan, has been approved by the local authority.

(2) In respect of an application for a certificate under subsection (1), clause (c), the local authority shall direct the issue of the certificate if it is satisfied that

(a) separate occupation of the proposed units will not contravene any development control or zoning by-law,

(b) any consent or approval required under such a by-law has been given in relation to the separate occupation of the proposed units, and

- (a) may, with respect to a building which was constructed prior to August 1, 1966 or for which the building permit was issued prior to August 1, 1966, prohibit the issue of the certificate if it considers it proper to do so, and
- (b) shall, with respect to a building for which a building permit was issued on or after August 1, 1966, direct the issue of the certificate if it is satisfied that the building conformed to
 - (i) the development scheme, development control by-law or zoning by-law, and
 - (ii) any permit issued under that scheme or by-law,that existed at the time the building permit was issued.

7. *The following headings and sections are added after section 8:*

Sale of Residential Units by Developers

8.1. (1) A developer shall not sell or agree to sell a residential unit or a proposed residential unit unless he has delivered to the purchaser a copy of

- (a) the purchase agreement,
- (b) the by-laws or proposed by-laws,
- (c) any management agreement or proposed management agreement,
- (d) any recreational agreement or proposed recreational agreement,
- (e) any lease or mortgage that affects the title of the residential unit or proposed residential unit,
- (f) any policy of insurance or proposed policy of insurance that pertains to the units, the common property or the corporation, and
- (g) the condominium plan or the proposed condominium plan.

(c) the building and the division of the building into units for separate occupation will not interfere with the existing or likely future amenity of the neighbourhood, having regard to the circumstances of the case and the public interest.

(3) The provisions relating to the subdivision of land contained in The Planning Act or the regulations thereunder do not apply to the division of a building pursuant to section 3, subsection (1), if the surface boundaries of the parcel correspond to the boundaries of a lawful parcel within the meaning of The Planning Act, and any disposition of common property does not contravene the provisions of that Act.

7. Provides for disclosure of information to purchasers, rescission of purchase agreements, holding of funds in trust, resale of units and management agreements.

8. Section 9 presently reads:

9. (1) *In this section,*

(a) "additional unit" means a unit not described in an original plan but described in a replacement plan, whether in an additional building or as an extension to a building shown on the original plan;

(b) "developer" means a person who signs a condominium plan as owner of the property as required by section 7;

(c) "original plan" means a condominium plan against which a caveat is registered pursuant to subsection (2);

(d) "replacement plan" means a condominium plan attached to a caveat as provided in subsection (3).

(2) When a condominium plan is registered the developer may, at any time before he transfers title to any unit to any person, reserve the right to construct additional units

(a) on the common property, or

(b) on additional land

(2) Notwithstanding subsection (1), if at the time of purchase of a residential unit there is registered at the land titles office

- (a) a by-law, or
- (b) a lease or mortgage that affects the title of that unit, or
- (c) the condominium plan,

the developer is not required to deliver to the purchaser of the unit a copy of that by-law, lease, mortgage or condominium plan, as the case may be.

(3) Where a purchase agreement is executed, the developer shall not, with respect to the residential unit that is the subject of the agreement,

- (a) amend, replace or cancel any document referred to in subsection (1), or
- (b) amend, replace or cancel any by-law, lease, mortgage or condominium plan registered at the land titles office,

unless the developer, not less than 10 days prior to delivering the title document to the purchaser, delivers to the purchaser a copy of that amendment or replacement or, in the case where the document is cancelled without being replaced, a notice of the cancellation.

(4) Notwithstanding subsection (3), a developer may at any time amend, replace or cancel any document referred to in subsection (1) where all the owners and purchasers give their written consent to the amendment, replacement or cancellation.

(5) Subject to subsection (6), a purchaser of a residential unit under this section may, without incurring any liability for doing so, rescind the purchase agreement within 10 days

- (a) from the date the purchase agreement was executed, or
- (b) where a copy of an amendment or replacement or a notice of cancellation is delivered to him under subsection (3), from the date that the copy of the amendment or replacement or the notice, as the case may be, was delivered to him.

(6) The purchaser may not rescind the purchase agreement pursuant to subsection (5) where

- (a) any documents required to be delivered pursuant to this section have been delivered to the purchaser not less than 10 days prior to that purchaser executing the purchase agreement, and

to be brought into the condominium scheme on completion of construction by registering a caveat against the condominium plan and the certificate of title of each unit described in the plan.

(3) The caveat shall have attached thereto a replacement plan complying with sections 7 and 8, except for the certificate of an architect, and showing the parcel, building and units as on the original plan and the additional units and land, if any, intended to be brought in.

(4) If a certificate of a registered architect that the additional units exist as shown on the replacement plan is not registered within

- (a) two years after the date of registration of the caveat, or
- (b) any period of extension allowed under subsection (5),

the caveat lapses and all rights reserved to the developer thereunder cease.

(5) When completion of the additional units is delayed

- (a) the owners, by unanimous resolution, or
- (b) the Supreme Court, on application of the developer by originating notice and on such terms and conditions as the Court considers just,

may grant a period of extension for completion of the additional units, not exceeding six months.

(6) If a certificate of a registered architect that the additional units exist as shown on the replacement plan is registered before the caveat lapses, the Registrar shall register the replacement plan and cancel the original plan and the certificate of title to the additional land being brought in, if any, and

- (a) cancel the certificates of title to the units described in the original plan and issue to the owners thereof certificates of title for the same units as described in the replacement plan subject to all interests affecting those units that are endorsed on the cancelled certificates of title, and
- (b) issue to the developer certificates of title to the additional units subject to the interests affecting those units that are endorsed on the certificates of title issued under the original plan,

and, except to the extent that any interest so endorsed on a certificate of title relates to the particular unit, the owner of an original unit or the owner of an additional unit, as the case may be, is only liable in respect of any such interest in the proportion that his unit factor bears to the total of unit factors for the original units or the additional units, as the case may be.

(7) For the purpose of settling its assets and liabilities and winding up its affairs, the corporation constituted on the registration of the original plan continues in existence after the registration of the replacement plan and the board of management and by-laws of that corporation become the first board of managers and the first by-laws of the corporation constituted on the registration of the replacement plan.

- (b) there has not been
 - (i) any amendment, replacement or cancellation in respect of those documents from the time the documents were delivered to the purchaser to the time the purchase agreement is executed, or
 - (ii) any amendment, replacement or cancellation of any by-law, lease, mortgage or condominium plan registered in the land titles office respecting that residential unit from the time the documents referred to in clause (a) were delivered to the purchaser to the time the purchase agreement is executed.

8.2. Every developer who enters into a purchase agreement shall include in that purchase agreement the following:

- (a) a notification that is at least as prominent as the rest of the contents of the purchase agreement and that is printed in red ink on the outside front cover or on the first page of the purchase agreement stating the purchaser's right to rescind the purchase agreement under section 8.1;
- (b) a detailed description
 - (i) of the interior finishing of the common property,
 - (ii) of any recreational facilities, equipment and other amenities provided for the use of the owners of the units, and
 - (iii) any equipment owned or provided to the corporation for the maintenance of the common property;
- (c) the amount of the current or estimated monthly unit contribution and the portion thereof, if any, allocated to a capital replacement reserve fund;
- (d) the current balance of the capital replacement reserve fund or, if there is no fund, a statement to the effect that the corporation does not maintain a capital replacement reserve fund;
- (e) the manner of disposition of the moneys held in trust;
- (f) the amount of the monthly unit contributions in the form prescribed under section 8.4;
- (g) the unit factor of the unit and the manner of calculation of the unit factor for all units designated in the condominium plan.

(8) The developer

- (a) is responsible for all expenses and liabilities whatsoever (including property taxes, local improvement charges and fire and public liability insurance) on or in connection with the additional units and any land to be added to the common property incurred up to the date of registration of an architect's certificate pursuant to subsection (6),*
- (b) shall indemnify and save harmless the owners of the units described in the original plan and the corporation for and from all costs, damages, claims and demands of any kind arising out of or resulting from the exercise of any of the rights reserved to him under the caveat,*
- (c) shall, before commencing construction of any additional unit, provide to the owners of the units described in the original plan and the corporation the bond of an insurance company registered under The Alberta Insurance Act guaranteeing the payment of any liability of the developer under this subsection, and*
- (d) is responsible for the fees of the Registrar for his services under subsection (6).*

(9) Section 144 of The Land Titles Act does not apply to a caveat registered under this section.

8.3. (1) Where a purchaser has entered into a purchase agreement with a developer and that developer has failed to comply with the requirements of section 8.1, subsections (1) to (4) or section 8.2, the purchaser may within 30 days of becoming aware of that failure, give to the developer written notice requiring the developer, at the option of the purchaser, to

- (a) return to the purchaser the amount of money paid by the purchaser to the developer in respect of the purchase of that unit, or
- (b) pay to the purchaser the amount stated in that notice as damages for loss suffered by the purchaser on account of that failure.

(2) A notice under subsection (1) may be given at any time

- (a) during which the developer remains the owner of not less than 25 per cent of the residential units designated under the condominium plan, or
- (b) within two years from the date the purchaser entered into the purchase agreement,

whichever is sooner.

(3) Where a developer is given a notice under subsection (1), clause (a), he may set off from the amount payable to the purchaser

- (a) a reasonable amount for rent in respect of the period of time that the purchaser resided in the residential unit, and
- (b) a reasonable amount as compensation for any damage, other than normal wear and tear, to the residential unit for which the purchaser was responsible.

(4) Upon receiving payment pursuant to a notice given under subsection (1), clause (a),

- (a) where the certificate of title of the residential unit is registered in the name of the purchaser, the purchaser shall forthwith deliver to the developer a registrable transfer in respect of that unit, or
- (b) where the purchaser has purchased the residential unit under an agreement for sale, the purchaser shall
 - (i) relinquish to the developer any interest he has in that unit, and
 - (ii) forthwith deliver to the developer a registrable discharge in respect of any caveat registered in respect of that agreement for sale.

(5) Where

- (a) the developer does not comply with a notice given under subsection (1), or
- (b) the developer is of the opinion that he has complied with the requirements of section 8.1 or 8.2, or
- (c) the developer is of the opinion that
 - (i) only damages should be paid notwithstanding that a notice is given under subsection (1), clause (a), or
 - (ii) the amount of damages claimed under a notice given under subsection (1), clause (b) is excessive,
- or
- (d) the purchaser objects to the amount of money set off under subsection (3), or
- (e) the purchaser fails to comply with subsection (4),

the purchaser or developer, as the case may be, may apply by originating notice to the Supreme Court and upon hearing the matter the Court may grant such relief and award such costs as the Court considers proper.

8.4. (1) Every developer who enters into a purchase agreement shall include in that purchase agreement a statement estimating, with respect to the first two years commencing on the date that the condominium plan was registered or on the date that the purchase agreement was executed in respect of the sale of the first residential unit, whichever is later,

- (a) the total amount of money that the corporation will require to meet its obligations for each of those years under section 19,
- (b) the amount of the monthly contributions which the purchaser will be required to pay to the corporation as the purchaser's share of the amount required to enable the corporation to raise the amount of money referred to in clause (a),
- (c) the total amount of the contributions which all the owners of residential units will be required to pay to the corporation to enable the corporation to raise the amounts of money referred to in clause (a), and

(d) the amounts, if any, to be received by the corporation from sources other than from the owners of the residential units.

(2) Where the by-laws or the proposed by-laws provide for a capital replacement reserve fund, the developer shall, in the purchase agreement, include a statement estimating

(a) the amount of the fund necessary to allow the corporation to maintain, repair or replace

(i) any personal property owned by the corporation, and

(ii) the common property,

and

(b) the amount of the contributions that the purchaser will be required to pay to the corporation to enable the corporation to build up the fund to the amount referred to in clause (a).

(3) Where the corporation, with respect to the first two years referred to in subsection (1), is required to collect contributions from the owners of the residential units in amounts greater than that referred to in subsection (1), clause (c) in order to enable the corporation to meet its obligations under section 19, the developer shall, at the conclusion of the second year and upon receipt of audited financial statements from the corporation for that two-year period, pay to the corporation those amounts reasonably spent by the corporation that are in excess of the amounts referred to in subsection (1), clause (c).

8.5. (1) A developer or a person on his behalf shall hold in trust all the money paid by a purchaser under a purchase agreement, other than money paid as rent or as a security deposit, and

(a) where the improvements to the residential unit and common property are substantially completed, that money may be paid to the developer upon delivery of the title document to the purchaser, or

(b) where the improvements to the residential unit are substantially completed but the improvements to the common property are not substantially completed,

(i) not more than one half of that money less the interest earned thereon may be paid to the developer upon delivery of the title document to the purchaser, and

- (ii) upon the improvements to the common property being substantially completed, the balance of that money and all the interest earned on the total amount held in trust in respect of that purchase agreement may be paid to the developer.

(2) The developer or a person on his behalf who receives money that is to be held in trust under subsection (1) shall forthwith deposit the money into an interest bearing account

- (a) maintained in a chartered bank, a treasury branch, a trust company registered under *The Trust Companies Act* or a credit union incorporated under *The Credit Union Act*, and

- (b) which is designated as a trust account.

(3) Money deposited under subsection (2) shall be kept on deposit in Alberta.

(4) Where money is being held in trust under subsection (1) in respect of the purchase of a residential unit and the purchase agreement under which that money was paid is rescinded under section 8.1, subsection (5) or the purchaser gives up ownership of the residential unit under section 8.3, the developer or a person on his behalf holding that money in trust shall, subject to the developer's right of set off under section 8.3, subsection (3), return to the purchaser all of that money including the interest earned thereon.

(5) Where

- (a) money is being held in trust under subsection (1), and
- (b) the purchaser of the residential unit takes possession of or occupies the unit prior to receiving the title document,

the interest earned upon that money from the day the purchaser takes possession or occupies the unit to the day he receives the title document shall be applied against the purchase price of the unit.

(6) Subject to subsections (4) and (5), the developer is entitled to the interest earned upon money held in trust under this section.

(7) For the purpose of this section, improvements to the residential unit or the common property, as the case may be, shall be deemed to be substantially completed where the improvements are ready for use or are being used for the purpose intended.

8.6. (1) In this section “approved plan” means a plan, agreement, scheme or arrangement that

- (a) provides for the receipt, handling and disbursing of money paid to a developer by a purchaser in respect of the purchase of a residential unit, and
- (b) is designated by an order of the Minister of Consumer and Corporate Affairs as an approved plan.

(2) Section 8.5 does not apply in respect of money paid to a developer for the purchase of a residential unit where that money is received, handled and disbursed under the provisions of an approved plan.

Resale of Residential Units

8.7. (1) Where the owner of a residential unit, other than a developer, agrees to sell or assign his interest in that unit to another person, the corporation shall, upon receiving a written request from that owner, provide to that owner the following:

- (a) a statement setting forth the amount of any contributions due and payable in respect of that unit,
- (b) the particulars of
 - (i) any action to which the corporation is a party and which has not been concluded,
 - (ii) any unsatisfied judgment or order for which the corporation is liable, and
 - (iii) any demand made upon the corporation which, 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 or a copy of any subsisting recreational agreement,
- (e) a copy of the current budget of the corporation,
- (f) a copy of the current financial statement of the corporation, and
- (g) a statement setting forth the amount, if any, of the capital replacement reserve fund.

(2) Upon providing the information requested under subsection (1), the corporation is estopped from denying the validity of that information as against any purchaser who relied thereon.

(3) Where the corporation fails to provide the information under subsection (1) within 10 days from the day of receiving the written request for the information, that corporation shall not recover from the purchaser of the unit any portion of any unpaid contribution or of any demand or unsatisfied judgment or order for which the corporation is liable that existed at the time the request was received.

8.8. (1) Where the owner of a residential unit, other than a developer, agrees to sell the unit, the purchaser of the unit may, within 10 days

(a) from the day of entering into the agreement to purchase the unit, or

(b) subject to subsection (2), from the day he received from the vendor the information provided under section 8.7,

whichever is later, rescind the agreement to purchase that unit without incurring any liability for doing so.

(2) A purchaser may not rescind an agreement to purchase a residential unit under subsection (1), clause (b) if that purchaser received from the vendor the information provided under section 8.7 not less than 10 days prior to the day that he entered into the agreement to purchase the unit.

8.9. Where an owner of a residential unit, other than a developer, agrees to sell that unit, the agreement to purchase the unit shall contain a notification that is at least as prominent as the rest of the contents of the agreement stating the purchaser's right to rescind the agreement under section 8.8.

Management and Recreational Agreements

8.91. (1) Where a board enters into a management agreement at a time during which the developer holds title to a majority of the residential units, that agreement may, subject to subsection (2), be terminated by a board that is elected at any time after a majority of the residential units are owned by persons other than the developer.

(2) Notwithstanding the provisions of any management agreement, a management agreement

(a) may not be terminated under subsection (1) without cause until two years have elapsed from the day that the agreement was entered into, except where the agreement permits termination at an earlier date, and

(b) may only be terminated under subsection (1) upon the board giving 60 days written notice to the other party to the agreement of its intention to terminate the agreement.

(3) Notwithstanding anything contained in the management agreement, a board is not liable to any person by reason only of that agreement being terminated under this section.

8.92. Upon the request of an owner, the corporation shall, for a reasonable fee, provide to the owner a copy of any subsisting management agreement or recreational agreement or amendment thereto, as the case may be, to which that corporation is a party.

8. The heading "Future Development" and section 9 are struck out.

9. The following heading and section are added after section 10:

Conversions

10.1. (1) Where a building contains premises that

- (a) are being rented for residential purposes, and
- (b) are not included in a condominium plan,

the owner of those premises or any person on his behalf shall not sell or agree to sell those premises as residential units or as part of a residential unit until the condominium plan that includes those premises is registered at the land titles office.

(2) A local authority shall not issue a certificate under section 8, subsection (1), clause (c) in respect of an existing building that contains premises that are being rented for residential purposes unless the person applying for the certificate has given notice to each tenant renting those premises of the application to the local authority for the certificate.

(3) A notice given to a tenant under subsection (2) must be

- (a) in writing, and
- (b) served upon the tenant
 - (i) by means of personal service, or
 - (ii) by registered mail sent to the tenant at the address of the premises that the tenant rents and

9. Conversion of existing residential premises into condominium units.

that are to be included in the proposed condominium plan,

not less than 30 days prior to the day that the application is made to the local authority for a certificate under section 8, subsection (1), clause (c).

10. Section 15 is amended by adding after subsection (3) the following:

(4) Notwithstanding subsection (2), where a mortgagee is exercising voting rights under this section in respect of a residential unit, he may only exercise those rights if the question being voted upon relates to

- (a) insurance acquired by the corporation, or
- (b) maintenance to be carried out by the corporation, or
- (c) the financial matters of the corporation, or
- (d) matters relating to the payment of taxes.

11. Section 17 is amended by adding after subsection (1) the following:

(1.1) Where a developer registers a condominium plan, he shall within

- (a) 90 days from the day that 50 per cent of the residential units are sold, or
- (b) 180 days from the day that the first residential unit is sold,

whichever is sooner, convene a meeting of the corporation at which the board of managers shall be elected.

(1.2) A corporation shall,

- (a) within 15 days of a person becoming a member of the board, file at the land titles office a notice in the prescribed form showing the name and address of that person, and
- (b) within 15 days of a person ceasing to be a member of the board, file at the land titles office a notice in the prescribed form giving the name and address of that person and the date upon which he ceased being a member of the board.

10. Section 15 presently reads:

15. (1) The voting rights of the owner of a unit are determined by the unit factor for his unit.

(2) Where an owner's interest is subject to a registered mortgage, a power of voting conferred on an owner by this Act or the by-laws,

(a) if a unanimous resolution is required, may not be exercised by the owner, but is exercisable by the registered mortgagee first entitled in priority, and

(b) in other cases, is exercisable by the mortgagee first entitled in priority, and may not be exercised by the owner if the mortgagee is present personally or by proxy.

(3) Subsection (2) does not apply unless the mortgagee has given written notice of his mortgage to the corporation.

11. Section 17 presently reads:

17. (1) A corporation shall have a board of managers which shall be constituted as provided by the by-laws of the corporation.

(2) The powers and duties of a corporation shall, subject to any restriction imposed or direction given at a general meeting, be exercised and performed by the board of the corporation.

(3) All acts done in good faith by a board are, notwithstanding that it is afterwards discovered that there was some defect in the election or appointment or continuance in office of any member of the board, as valid as if the member had been properly elected or appointed or had properly continued in office.

12. Section 18 is amended

(a) *by striking out subsection (3) and by substituting therefor the following:*

(3) Any by-law may be amended, repealed or replaced by a resolution passed at a properly convened meeting of the corporation by a majority of not less than three-fourths of all the owners representing not less than three-fourths of the total unit factors for all the units.

(b) *as to subsection (4), by striking out the words “addition to or an amendment or repeal” and by substituting therefor the words “amendment, repeal or replacement”, and*

(c) *as to subsection (5) by striking out the words “addition to or amendment or repeal” and by substituting therefor the words “amendment, repeal or replacement”.*

13. *The following sections are added after section 18:*

18.1. Any amendment, repeal or replacement of a by-law is void if it was passed at any time

- (a) within the 10 days immediately prior to the day that the title document in respect of the first unit sold is delivered to the purchaser, or
- (b) during the period that the person who registered the condominium plan holds title to not less than 25 per cent of the units,

unless all the owners consent in writing to the amendment, repeal or replacement.

18.2. (1) Where the majority of the members of the board are of the opinion that an owner of a residential unit or another person residing in that unit failed to comply or is failing to comply with a by-law, the board may give notice to the owner and that other person, as the case may be, of the failure to comply with the by-law.

(2) A notice under subsection (1) shall

- (a) be in writing,
- (b) state the by-law not complied with and the nature of the failure to comply with that by-law, and
- (c) be served upon the owner and, in the case where the owner does not reside in the unit, upon any adult person who is residing in the unit.

12. Section 18, subsections (3), (4) and (5) presently read:

(3) The by-laws set forth in Schedule A shall not be added to, amended or repealed except by unanimous resolution.

(4) An addition to or an amendment or repeal of any by-law set forth in Schedule A has no effect

(a) until the corporation lodges a copy thereof with the Registrar, and

(b) until the Registrar has made reference thereto on the registered plan.

(5) No by-law or addition to or amendment or repeal of any by-law of a corporation is capable of operating to prohibit or restrict the devolution of units or any transfer, lease, mortgage or other dealing therewith or to destroy or modify any easement implied or created by this Act.

13. Section 18.1 provides that certain by-laws made by a developer are void. Section 18.2 provides for the enforcement of by-laws.

(3) Upon giving notice to a person under subsection (1), the board may take proceedings under *The Small Claims Act* to recover from that person a penalty of not more than \$100 in respect of that person's failure to comply with the by-law for which the notice was given.

(4) Where an action is commenced under subsection (3) and the trial is proceeded with the corporation must establish to the satisfaction of the provincial judge hearing the matter that

- (a) a notice was served under subsection (1),
- (b) the by-law in respect of which the notice was given was properly enacted, and
- (c) the person in respect of whom the action was commenced failed to comply with the by-law.

(5) Upon completion of the trial referred to in subsection (4), the provincial judge hearing the matter may

- (a) give a judgment against the defendant in the amount being sued for or such lesser amount as appears proper in the circumstances, or
- (b) dismiss the action,

and make such order as to costs as appear proper in the circumstances.

(6) Where

- (a) judgment is given against the defendant, or
- (b) entered by default against the defendant,

and the amount of the judgment and costs are not satisfied, the board may in addition to any rights or recovery the board has in law, recover the amount of the judgment in the same manner as a contribution under section 20 and for that purpose that amount shall be considered as a contribution under section 20.

(7) A corporation may not give a notice or exercise any powers under this section unless it is authorized by by-law to do so.

14. Section 20, subsection (1) is amended by striking out clause (d) and by substituting therefor the following:

- (d) to recover from any owner by an action in debt any sum of money properly spent by the corporation in respect of that unit.

14. Section 20, subsection (1), clause (d) presently reads:

20. (1) In addition to its other powers under this Act, the powers of a corporation include the following:

15. *Section 21 is struck out and the following is substituted therefor:*

21. (1) The corporation

(a) shall insure and keep insured the units, improvements thereto and the common property against loss resulting from

(i) damage or destruction caused by fire, and

(ii) damage or destruction caused by other perils specified in the by-laws,

and

(b) may acquire insurance against additional perils other than those specified in the Act or the by-laws,

and for that purpose the corporation has an insurable interest in the units, improvements and common property.

(2) The amount of the insurance carried under subsection (1), clause (a) must be at least equal to the replacement cost of the units, improvements and common property.

(3) Where a corporation acquires insurance under subsection (1), clause (b), it shall cancel that insurance if it is not authorized to continue that insurance by resolution passed at a properly convened meeting of the corporation.

(4) Any payment by an insurer under a policy of insurance for the destruction of or damage to a unit or an improvement or the common property shall

(a) be paid to or to the order of the corporation, notwithstanding the terms of the policy, and

(b) be used forthwith by the corporation, subject to sections 29, 30 and 31, for the repair or replacement of the damaged or destroyed unit, improvement or common property, as the case may be.

(5) Insurance against the loss resulting from destruction or damage to the units, improvements or common property

(a) that is acquired by the corporation is deemed to be first loss insurance, and

(d) to recover from any owner by an action for debt any sum of money expended by the corporation for repairs to or work done by it or at its direction in complying with any notice or order by a local authority or public authority in respect of that portion of the building comprising the unit of that owner.

15. Section 21 presently reads:

21. (1) The corporation shall insure and keep insured the units and the common property to the replacement value thereof against fire, and against any other supplemental perils which may be specified by the by-laws, to the extent required by the by-laws and for this purpose the corporation has an insurable interest to the replacement value of the units and the common property, and an insurable interest in the subject matter of any other supplemental perils insurance.

(2) Where the by-laws are silent concerning insurance against any supplemental peril, the board may insure against that peril but the premium payable therefor shall only obligate the corporation for a period until the next general meeting of the corporation at which time continuation of the insurance may be authorized by special resolution.

(3) Any payment by an insurer under a policy of insurance entered into under subsection (1) shall, notwithstanding the terms of the policy, be paid to or to the order of the corporation, and, subject to section 29, the corporation shall forthwith use the proceeds for the repair or replacement of the damaged units and common property so far as the same may lawfully be effected.

(4) A policy of insurance issued to a corporation under subsection (1) is not liable to be brought into contribution with any other policy of insurance except another policy issued on the same property under subsection (1), and, notwithstanding the provisions of the policy, shall be deemed not to be other insurance in relation to such other policy.

(b) that is acquired by the owner of a unit in respect of the same property that is insured by the corporation is deemed to be excess insurance.

(6) A corporation that

(a) insures an improvement to a unit under subsection (1), and

(b) has paid an additional premium for that insurance

may recover that additional premium from the owner of that unit in the same manner as it may recover a contribution under section 20, and for that purpose it shall be considered as a contribution under section 20.

(7) Where a corporation acquires insurance under this section and the insurer makes a payment to the corporation under the policy, that insurer may not, in respect of that payment, bring or maintain an action against any owner of a unit or any persons residing in a unit.

16. Section 22 is amended by striking out subsections (1) and (2) and by substituting therefor the following:

22. (1) Notwithstanding section 21, subsection (1) of this Act, any provision of *The Alberta Insurance Act* or any other law relating to insurance, a unit owner may insure

(a) his unit, to the replacement cost thereof, against fire and such other perils to the extent that it is not so insured by the corporation under section 21, subsection (1), and

(b) improvements to his unit, to the extent the improvements are not so insured by the corporation under section 21, subsection (1).

17. The following section is added after section 24:

16. Section 22 presently reads:

22. (1) Notwithstanding section 21, subsection (1), The Alberta Insurance Act, or any other law relating to insurance, a unit owner may insure

- (a) his unit, to the replacement value thereof, against fire and such other supplemental perils to the extent that it is not so insured by the corporation under section 21, subsection (1),*
- (b) improvements to his unit, to the extent the improvements are not so insured by the corporation under section 21, subsection (1),*
- (c) his unit, in a sum equal to the amount owing at the date of any loss referred to in the policy on a mortgage of his unit, and*
- (d) his unit, against any other supplemental perils, where the supplemental perils are not insured by the corporation.*

(2) Notwithstanding The Alberta Insurance Act, or the terms and conditions of the policy, any payment by an insurer under a policy of insurance entered into for the purpose of subsection (1), clause (c) shall be made to the mortgagees, if the mortgagees, or any of them, so require, in the order of their priorities, and the insurer is then entitled to an assignment of the mortgage or a partial interest in the mortgage to secure the amount so paid.

(3) A policy of insurance issued to a unit owner under the authority of subsection (1) is not liable to be brought into contribution with any other policy of insurance except another policy issued on the same property under subsection (1), and, notwithstanding the provisions of the policy, shall be deemed not to be other insurance in relation to such other policy.

17. Certificate of insurance.

24.1. The insurer of the units, improvements and the common property or any of them shall, upon the written request of an owner of a residential unit, issue to that person, with respect to the insurance acquired by the corporation,

- (a) a certificate of insurance stating
 - (i) the kind and the amount of insurance,
 - (ii) the description of the property insured,
 - (iii) the expiry date of the policy of insurance, and
 - (iv) specific coverage provided for under the insurance,

or

- (b) a copy of the policy of insurance.

18. The following section is added after section 25:

25.1. Notwithstanding section 25, a corporation may, where the by-laws permit it to do so, enter into a lease with an owner of a residential unit permitting that owner to exercise exclusive possession in respect of an area or areas of the common property.

19. The following heading and sections are added after section 27:

Rental of Residential Units

27.1. (1) Where an owner of a residential unit rents that unit to another person, it is a condition of that tenancy, notwithstanding any provision contained in the tenancy agreement, that the persons residing in that unit

- (a) shall not cause damage to the common property or to other units, and
- (b) shall comply with the by-laws set forth in Schedule B or with any amendment or replacement of those by-laws.

(2) The corporation may require an owner who rents his residential unit to another person to pay to the corporation a deposit to be used for the repair or replacement of common property that is damaged by a person residing in that rented unit.

(3) The corporation may recover from the owner who fails to pay the deposit under subsection (2) the amount of that deposit in the same manner as a contribution under section 20

18. Exclusive use areas.

19. Permits the corporation to have certain control over persons who are renting residential units.

and for that purpose the deposit shall be considered as a contribution under section 20.

27.2. (1) The corporation may give a tenant renting a residential unit a notice to give up possession of that unit where, in the opinion of the majority of the members of the board, a person residing in that unit is

- (a) causing damage, other than normal wear and tear, to the common property, or
- (b) failing to comply with the by-laws set forth in Schedule B or with any amendment or replacement of those by-laws.

(2) Where the corporation gives a tenant a notice to give up possession of a residential unit,

- (a) the tenant shall give up possession of that unit,
- (b) the tenancy of that tenant shall terminate, and
- (c) the tenancy agreement between the tenant and his landlord shall terminate,

upon the last day of the month immediately following the month in which the notice is served upon the tenant, notwithstanding anything contained in the tenancy agreement between the landlord and the tenant.

(3) A notice to give up possession of a residential unit shall be served upon the tenant and upon the owner of that unit.

(4) Service of a notice given under this section shall be effected

- (a) by personal service, or
- (b) by registered mail sent
 - (i) to the tenant at the address of the unit in respect of which the notice is given, and
 - (ii) to the owner at the latest address of the owner according to the records of the corporation.

27.3. (1) Where a tenant is given notice under section 27.2, subsection (1) and the tenant does not give up possession of the residential unit as required under section 27.2, subsection (2), the corporation may apply by originating notice to the Supreme Court for an order requiring the tenant to give up possession of the residential unit.

(2) The originating notice shall be served upon the tenant not less than three days before the day named in the notice for the hearing of the application.

(3) The application of the corporation shall be supported by an affidavit

- (a) proving the service of the notice to give up possession under section 27.2,
- (b) stating the reasons for giving the tenant a notice to give up possession,
- (c) stating the failure of the tenant to give up possession and the reasons given, if any, for that failure, and
- (d) stating any other relevant facts.

(4) Upon hearing the application the Court may by order

- (a) require the tenant to give up possession of the residential unit, and
- (b) award costs in respect of the application.

27.4. (1) Where a person residing in a residential unit that is being rented has caused or is causing excessive damage to the common property or to any of the other units, the corporation may, notwithstanding that the tenant renting that residential unit has or has not been given a notice to give up possession of that residential unit under section 27.2, apply by originating notice to the Supreme Court for an order requiring the tenant to give up immediate possession of that residential unit.

(2) The originating notice shall be served upon the tenant not less than three days before the day named in the notice for the hearing of the application.

(3) The application of the corporation shall be supported by an affidavit

- (a) stating the damage to the common property or other units that a person residing in the residential unit has caused or is causing, and
- (b) stating any other relevant facts.

(4) Upon hearing the application the Court may by order

- (a) require the tenant to give up possession of the residential unit, where the Court is satisfied that

- (i) a person residing in that residential unit has caused or is causing excessive damage to the common property or the other units, and
 - (ii) there are reasonable and probable grounds to believe that further damage may be done to the common property or the other units if the tenant is allowed to remain in possession of the rented unit,
- (b) fix the day upon which the tenant is required to give up possession of the unit, and
 - (c) award costs in respect of the application.
- (5) Where an order is made under subsection (4),
- (a) the tenancy of that tenant is deemed to terminate, and
 - (b) the tenancy agreement between the tenant and the landlord is deemed to terminate,

on the day upon which the tenant is required to give up possession of the unit.

27.5. A corporation shall not

- (a) impose or collect a deposit under section 27.1, or
- (b) give a notice to give up possession of a residential unit under section 27.2, or
- (c) make an application to the Supreme Court under section 27.3 or 27.4,

unless it is authorized by by-law to do so.

27.6. (1) Where

- (a) the interest of an owner of a residential unit is subject to a registered mortgage, and
- (b) that residential unit is being rented,

all the voting rights of the owner of that unit may be exercised by the registered mortgagee first entitled in priority, to the exclusion of the owner, notwithstanding anything in section 15.

(2) A mortgagee may not exercise any power under this section unless it is authorized by by-law of the condominium corporation to do so.

20. *Section 31 is amended*

- (a) *as to subsection (1), by adding after the words “may be made” the words “by originating notice”, and*
- (b) *by striking out subsection (2) and by substituting therefor the following:*

(2) On an application under this section, if the Supreme Court is satisfied that it is just and equitable that the condominium status of the building should be terminated, the Court may make a declaration to that effect, and in determining whether the termination is just and equitable, the Court shall have regard to

- (a) the purpose and intent of this Act,
- (b) the probability of unfairness to one or more owners if declaration is not made, and
- (c) the probability of confusion and uncertainty in the affairs of the corporation or the owners if the declaration is not made.

21. *Section 41 is struck out.*

22. *Section 42 is amended by striking out subsection (1) and by substituting therefor the following:*

- 42.** (1) A document may be served on the corporation or any member of the board
- (a) by leaving the document at or by sending it by registered mail to the corporation’s latest address for service according to the records at the land titles office, or
 - (b) by serving the document on any member of the board by means of personal service.

23. *The following section is added after section 42:*

42.1. (1) A corporation may by resolution of the board change its address for service.

(2) A change in the address for service under subsection (1) does not take effect until there is filed in the prescribed form at

20. Section 31 presently reads:

31. (1) An application to terminate the condominium status of a building may be made to the Supreme Court by the corporation or by an owner or by a registered mortgagee of a unit or a vendor under an agreement for sale of a unit.

(2) On an application under this section, if the Supreme Court is satisfied that, having regard to the rights and interests of the owners as a whole, it is just and equitable that the condominium status of the building should be terminated, the Court may make a declaration to that effect.

(3) Where a declaration has been made pursuant to subsection (2), the Supreme Court may, by order, impose such conditions and give such directions, including directions for the payment of money, as it thinks fit for the purpose of adjusting as between the corporation and the owners and as amongst the owners themselves the effect of the declaration.

(4) On any application to the Supreme Court under this section any insurer who has effected insurance on the building or any part thereof, being insurance against destruction of units or damage to the building, has the right to appear in person or by agent or counsel.

21. Section 41 presently reads:

41. A corporation shall at or near the front building alignment of the parcel cause to be continually available a receptacle suitable for purposes of a postal delivery, with the name of the corporation clearly set out thereon.

22. Section 42 presently reads:

42. (1) A document may be served on the corporation or the board thereof

(a) by post enclosed in a prepaid letter addressed to the corporation or the board, as the case may be, at the address shown on the condominium plan concerned, or any amendment thereof, or

(b) by placing the document in the receptacle mentioned in section 41.

(2) For the purposes of this section "document" includes summons, notice, tax notice, order and other legal process.

23. Change of address.

the land titles office, a notice of the change in the address for service.

24. *Section 45 is struck out and the following is substituted therefor:*

- 45.** (1) Where a judgment is obtained against a corporation,
- (a) that judgment shall be deemed to be a judgment against the corporation and against each person who owned a unit at the time the cause of action arose, and
 - (b) a writ of execution in respect of that judgment may be registered against the certificate of title of each person who under clause (a) is deemed to have a judgment against him.
- (2) The liability of a unit owner under a judgment referred to in subsection (1) shall be in direct proportion to and limited by that owner's unit factor.

25. *Section 47 is amended*

- (a) *by renumbering the section as subsection (1),*
- (b) *as to clause (a) of renumbered subsection (1), by adding after the words "any requirement of" the words "section 17, subsection (1.2),", and*
- (c) *by adding after renumbered subsection (1) the following:*

(2) Every person who knowingly defaults in complying with section 8.1, subsection (1) or (3) or section 8.2 is guilty of an offence and liable upon summary conviction to a fine of

- (a) not more than \$2,000, or
- (b) where the person is an incorporated body, not more than \$25,000.

26. *Schedule A and Schedule B are struck out and the following substituted therefor:*

24. Section 45 presently reads:

45. Where a judgment is obtained against a corporation a writ of execution in respect thereof may be registered against the condominium plan.

25. Section 47 presently reads:

47. If default is made in complying with

(a) any requirement of section 18, subsection (4), section 32, subsection (1), section 36, subsection (1) or section 41, or

(b) any duty to a municipality imposed on a corporation by this Act,

the corporation and each member of the board who is knowingly a party to the default is guilty of an offence and is liable upon summary conviction to a fine of not more than five hundred dollars.

26. Replaces Schedules A and B.

SCHEDULE A

BY-LAWS

Duties of the Owner

1. An owner shall
 - (a) permit the corporation and its agents, at all reasonable times on notice (except in case of emergency when no notice is required), to enter his unit for the purpose of inspecting the unit and maintaining, repairing and renewing pipes, wires, cables and ducts for the time being existing in the unit and capable of being used in connection with the enjoyment of any other unit or common property, or for the purpose of maintaining, repairing or renewing common property, or for the purpose of ensuring that the by-laws are being observed,
 - (b) forthwith carry out all work that may be ordered by the local authority or the Government of Alberta in respect of his unit, other than such work as may be for the benefit of the building or buildings generally and pay all rates, taxes, charges and assessments that may be payable in respect of his unit,
 - (c) repair and maintain his unit, and keep it in a state of good repair,
 - (d) notify the corporation forthwith of
 - (i) any change in the ownership of the unit, or
 - (ii) any mortgage registered against the unit,
 - (e) notify the corporation forthwith of the name of any person who is renting the unit,
 - (f) not make structural, mechanical or electrical alterations to his unit without the prior written consent of the board, which shall not be unreasonably withheld, and
 - (g) subject to clause (f), not make any alteration to the common property.

Duties of the Corporation

2. The corporation shall
 - (a) control, manage and administer the common property for the benefit of all owners,
 - (b) keep in a state of good repair and properly maintain any personal property used for the upkeep of the common

property or used by the owners in connection with the common property,

- (c) maintain lawns and gardens on the common property,
- (d) maintain, repair and renew pipes, wires, cables and ducts for the time being existing in the parcel and capable of being used in connection with the enjoyment of more than one unit or the common property, and
- (e) on the written request of an owner or registered mortgagee of a unit, make available for inspection to the owner or mortgagee, or a person authorized in writing by the owner or mortgagee, the policy or policies of insurance acquired by the corporation, and the receipt or receipts for the last premium or premiums in respect thereof.

Powers of the Corporation

3. The corporation may

- (a) purchase or otherwise acquire personal property for the maintenance of the common property or for use by owners in connection with their enjoyment of common property,
- (b) borrow money required by it in the performance of its duties or the exercise of its powers,
- (c) secure the repayment of money borrowed by it, and the payment of interest thereon, by negotiable instrument, a mortgage of unpaid contributions (whether levied or not), or a mortgage of any property owned by it, or by any combination of those means,
- (d) grant to an owner a lease under section 25.1 of *The Condominium Property Act*,
- (e) invest as it may determine any money received by it and not immediately required to pay expenses,
- (f) make an agreement with any owner or tenant of a unit for the provision of amenities or services by it to the unit or to the owner or tenant thereof, and
- (g) do all things reasonably necessary for the enforcement of the by-laws and the control, management and administration of the common property.

Election of the Board

- 4. (1)** The board shall consist of not less than three and not more than seven adult persons.

(2) Notwithstanding subsection (1), where there are not more than two owners, the board may consist of one or more adult persons, not to exceed seven in number.

Eligibility to Sit on the Board

5. (1) Ownership of a unit is not necessary for election to the board and any person shall be eligible for nomination to the board.

(2) Notwithstanding subsection (1),

- (a) where a unit has more than one owner, only one owner in respect of that unit may sit on the board at one time, and
- (b) any owner who is ineligible to cast a vote under section 30, subsection (2) of these by-laws is not eligible for election to the board.

Voting

6. At an election of members of the board each person entitled to vote may vote for such number of nominees as there are vacancies to be filled on the board.

Term of Office

7. (1) Subject to subsection (2), members of the board shall be elected at an annual general meeting for terms of two years.

(2) At the first general meeting of the corporation, not less than one-half of the members of the board shall be elected for a term of one year and the balance of the members shall be elected for a term of two years.

(3) Each member of the board shall remain in office until

- (a) the office becomes vacant under section 9 of these by-laws, or
- (b) the member resigns, or
- (c) the member is removed under section 8 of these by-laws, or
- (d) the annual general meeting is convened in respect of which his term of office expires,

whichever comes first.

Removal of a Member of the Board

8. Except where the board consists of two persons, the corporation may by resolution at a general meeting remove any member of the board before the expiration of his term of office and appoint another person in his place to hold office until an election is held at a general meeting to fill that office for the remainder of the term.

Vacating of the Office of a Member of the Board

- 9.** The office of a member of the board is vacated if he
- (a) becomes bankrupt, or
 - (b) is more than 30 days in arrears in payment of any contribution required to be made by him as an owner, or
 - (c) is the subject of a certificate of incapacity issued under *The Mental Health Act, 1972*, or
 - (d) is convicted of an indictable offence for which he is liable to imprisonment for a term of not less than two years, or
 - (e) resigns his office by serving notice in writing upon the corporation, or
 - (f) is absent from three consecutive meetings of the board without leave of the board and it is resolved at two meetings of the board held at least seven days apart that his office be vacated.

Vacancy

10. Where a vacancy occurs on the board under section 9 of these by-laws, the board may appoint a person to fill that vacancy until an election is held at a general meeting to elect a person to fill the office for the remainder of the former member's term.

Officers of the Corporation

11. (1) At the first meeting of the board held after the annual general meeting the board shall elect from its members a president, vice-president, secretary and treasurer of the corporation.

(2) Notwithstanding subsection (1), the board may elect one person to fill the offices of secretary and treasurer.

(3) In addition to those duties assigned to the officers by the board,

(a) the president or, in the event of his absence or disability, the vice-president,

(i) is responsible for the general organization of the business and the affairs of the corporation, and

(ii) shall act as chairman of the meetings of the board;

(b) the secretary or, in the event of his absence or disability, such other member of the board as designated by the board,

(i) shall record and maintain all the minutes of the board,

(ii) is responsible for all the correspondence of the corporation, and

(iii) shall carry out his duties under the direction of the president and the board;

(c) the treasurer or, in the event of his absence or disability, such other member of the board as designated by the board, shall

(i) receive all money paid to the corporation and deposit or invest that money as the board may direct,

(ii) properly account for the funds of the corporation and keep books as the board may direct,

(iii) present to the board when directed to do so by the board, a full detailed account of receipts and disbursements of the corporation,

(iv) prepare for submission at the annual general meeting

(A) a budget for the forthcoming fiscal year of the corporation, and

(B) an audited statement for the most recently completed fiscal year of the corporation, and

(v) submit a copy of the budget and audit statement referred to in subclause (iv) to the secretary for the records of the corporation.

(4) A person ceases to be an officer of the corporation if he ceases to be a member of the board.

(5) Where a person ceases to be an officer of the corporation, the board shall elect from its members a person to fill that office for the remainder of the former officer's term.

(6) Where a board consists of not more than three persons, those persons may perform the duties of the officers of the corporation as the board may direct.

Majority Vote and Quorum of the Board

12. (1) At meetings of the board, all matters shall be determined by simple majority vote, and in the event of a tie vote, the chairman shall be entitled to a casting vote in addition to his original vote.

(2) A quorum of a board shall be a simple majority of the members of the board.

Written Resolutions

13. A resolution of the board in writing signed by all of the members shall have the same effect as a resolution passed at a meeting of the board duly convened and held.

Seal of the Corporation

14. (1) The corporation shall have a corporate seal which shall not be used except

(a) under the authority of the board given prior to its use, and

(b) in the presence of not less than two members of the board who shall sign the instrument to which the seal is affixed.

(2) Notwithstanding subsection (1), where there is only one member of the corporation, that person may authorize the use of the corporate seal and sign the instrument to which the seal is affixed.

Signing Authority

- 15.** The board shall prescribe, by resolution,
- (a) those officers or other persons who are authorized to sign cheques, drafts, instruments and documents not required to be signed under the corporate seal, and
 - (b) the manner, if any, in which those cheques, drafts, instruments or other documents are to be signed.

Powers of the Board

- 16.** The board may
- (a) meet at the call of the president to conduct its business and adjourn and otherwise regulate its meetings as it thinks fit, but it shall meet when any member gives to the other members not less than seven days' notice of a meeting proposed by him, specifying the reason for calling the meeting;
 - (b) employ for and on behalf of the corporation such agents and employees as it thinks fit in connection with the control, management and administration of the common property, and the exercise and performance of the powers and duties of the corporation;
 - (c) subject to any restriction imposed upon or direction given to it at a general meeting of the corporation, delegate one or more of its members such of its powers and duties as it thinks fit, and at any time revoke that delegation;
 - (d) contract with any person for the management of the common property for such period and upon such terms and conditions as the board may consider appropriate, and may delegate, subject to the provisions of *The Condominium Property Act*, all of its powers and duties to that person;
 - (e) exercise all of the rights, powers and duties conferred on the corporation by *The Condominium Property Act* and the by-laws of the corporation.

Duties of the Board and Convening of Annual General Meetings

- 17.** (1) The Board shall
- (a) cause proper books of account to be kept in respect of all

sums of money received and expended by it and the matters in respect of which such receipt and expenditure take place;

- (b) prepare proper accounts relating to all money of the corporation, and the income and expenditure thereof, for each annual general meeting;
- (c) maintain a record of all the assets, liabilities and investments of the corporation;
- (d) upon an application of an owner or a mortgagee entitled to vote or any person authorized in writing by one of them, make the books of account, all minutes of general meetings and meetings of the board available for inspection at all reasonable times;
- (e) submit an annual report to the annual general meeting of the owners consisting of the financial statements and such information as the board may determine or as may be directed by a resolution passed at a general meeting.

(2) The board shall, once in every calendar year, convene an annual general meeting of the owners.

(3) An annual general meeting shall be convened within 15 months of the conclusion of the immediately preceding annual general meeting.

Procedure

18. All meetings of the board and general meetings shall be conducted according to rules of procedure as adopted by the board.

Other General Meetings

19. The board

- (a) shall, upon the written request by owners entitled to vote and who represent 15 per cent of the total unit factors for the units, convene a general meeting, and
- (b) may, wherever it considers it proper to do so, convene a general meeting.

Notice of General Meetings

20. (1) Where a general meeting is to be convened, the board shall, not less than seven days prior to the day upon which the

meeting is to be convened, give to each owner written notice of the meeting stating

- (a) the place, date and time at which the meeting is to be convened, and
- (b) the nature of any special business, if any, to be brought forth at the meeting.

(2) Upon being notified by a mortgagee entitled to vote under section 15 of *The Condominium Property Act* or under section 36 of these by-laws that it wishes to be notified of general meetings, the board shall give to that mortgagee the same notices required to be given under subsection (1) to the owner.

(3) A general meeting or anything done at that meeting is not invalid by reason only that

- (a) a person, by accident, was not, in respect of that meeting, given a notice under subsection (1), or
- (b) a person did not in fact receive a notice given under subsection (1) in respect of that meeting.

Quorum

21. (1) Except as otherwise provided in these by-laws, no business shall be transacted at any general meeting unless a quorum of persons entitled to vote is present at or represented by proxy, at the time when the meeting commences.

(2) A quorum for a general meeting consists of one-quarter of all the persons entitled to receive notice under section 20 of these by-laws being present in person or represented by proxy at that meeting.

(3) If within one-half hour from the time appointed for the commencement of a general meeting a quorum is not present, the meeting shall stand adjourned to the corresponding day in the next week at the same place and time and if at the adjourned meeting a quorum is not present within one-half hour from the time appointed for the commencement of the meeting, the persons entitled to vote who are present or represented by proxy constitute a quorum for the purpose of that meeting.

22. (1) The president shall act as chairman of the general meeting or, in the event of his absence or disability, the vice-president or such other person as may be elected at the meeting.

(2) The order of business at all annual general meetings and,

as far as practicable at all other general meetings, shall be as follows:

- (a) call to order by the chairman;
- (b) calling of the roll and certifying of proxies;
- (c) proof of notice of meeting or waiver or proxies;
- (d) reading and disposal of any unapproved minutes;
- (e) reports of officers;
- (f) reports of committees;
- (g) election of members of board;
- (h) unfinished business;
- (i) new business;
- (j) adjournment.

Show of Hands

23. (1) At any general meeting, a resolution shall be voted upon on a show of hands unless a poll is demanded by a person entitled to vote and present in person or by proxy, and unless a poll is so demanded, a declaration by the chairman that a resolution has on the show of hands been carried is conclusive proof of the fact without proof of the number or proportion of votes recorded in favour of or against the resolution.

(2) Where a person demands a poll, that person may withdraw that demand and upon the demand being withdrawn the vote shall be taken by a show of hands.

Taking of Poll

24. A poll, if demanded, shall be conducted in such manner as the chairman thinks proper and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

Tie Vote

25. In the case of a tie vote, whether on a show of hands or on a poll, the chairman of the meeting is entitled to a casting vote in addition to his original vote.

Number of Votes

26. (1) Where a vote is taken by a show of hands, each person entitled to vote has one vote.

(2) Where a vote is taken by a poll, the number of votes that a person may cast shall correspond to the unit factors for the respective units represented by that person.

Simple Majority for Votes at General Meeting

27. Except for matters requiring a special resolution or unanimous resolution, all matters shall be determined by a simple majority vote.

Manner of Voting

28. On a show of hands or on a poll, votes may be given either personally or by proxy.

Appointment of Proxy

29. An instrument appointing a proxy shall be in writing under the hand of the appointer or his attorney, and may be either general or for a particular meeting, but a proxy need not be an owner.

Restrictions on Voting

30. (1) Subject to subsection (2), there are no restrictions or limitations on an owner's rights to vote at a general meeting.

(2) Where, at the time of a general meeting, an owner has not paid to the corporation all contributions that are due and owing in respect of his unit, that owner is ineligible to cast a vote at that meeting.

(3) An owner's ineligibility to cast a vote does not effect the right of the mortgagee first entitled in priority in respect of a mortgage registered against the title of that owner's unit to vote in accordance with *The Condominium Property Act*.

Vote by Co-owners

31. (1) Where a unit is owned by more than one person, those co-owners may vote personally or by proxy and

(a) in the case of a vote taken by a show of hands, those co-owners are entitled to one vote between them, and

- (b) in the case of a vote taken by a poll, a co-owner is entitled to that portion of the vote applicable to the unit as is proportionate to his interest in the unit.
- (2) Any co-owner may demand that a poll be taken.

Signed Resolution

32. A resolution signed in person or by proxy by all the persons who, at a properly convened general meeting of the corporation, would be entitled to vote, shall have the same effect as a resolution duly passed at a general meeting.

Capital Replacement Reserve Fund

33. The board shall establish and maintain a capital replacement reserve fund as defined in *The Condominium Property Act*.

Failure to Comply with By-laws

34. The board may issue notices and exercise the powers provided for in section 18.2 of *The Condominium Property Act*.

Tenants

- 35.** The corporation is authorized to
- (a) impose and collect deposits under section 27.1 of *The Condominium Property Act*,
 - (b) give notices to give up possession of a residential unit under section 27.2 of *The Condominium Property Act*, and
 - (c) make applications to the Supreme Court under sections 27.3 and 27.4 of *The Condominium Property Act*.

Mortgagee (Tenants)

36. A mortgagee may exercise voting rights under section 27.6 of *The Condominium Property Act*.

Amendment of By-laws

37. (1) The by-laws of the corporation may only be amended,

repealed or replaced in accordance with the provisions of *The Condominium Property Act*.

- (2) Where a by-law is to be amended, repealed or replaced,
 - (a) the vote respecting that amendment, repeal or replacement shall, notwithstanding section 32 of these by-laws, be taken at a general meeting, and
 - (b) the persons entitled to vote shall, notwithstanding section 20 of these by-laws, be given written notice of that meeting stating
 - (i) the place, date and time at which the meeting is to be convened, and
 - (ii) the text of the proposed amendment, repeal or replacement of the by-laws

not less than 14 days prior to the day upon which the meeting is to be convened.

SCHEDULE B

BY-LAWS

- 1. In these by-laws,
 - (a) “occupant” means any person present in a unit or in or upon the common property with the permission of the owner;
 - (b) “owner” includes a tenant who is residing in a residential unit.

Restrictions in Use

- 2. An owner shall not
 - (a) use or enjoy the common property in such a manner as to unreasonably interfere with the use and enjoyment thereof by other owners or the occupants of their units;
 - (b) use his unit in any manner or for any purpose that will cause a nuisance or hazard to any other owner or the occupier of another unit;
 - (c) use his unit for any purpose that is illegal;
 - (d) make undue noise in or about any unit or the common property;

- (e) keep any animals on his unit or the common property after a date specified in a notice given to him by the board;
- (f) use his unit, in the case of a residential unit, for a purpose other than for residential purposes;
- (g) do anything within the parcel or bring or keep anything thereon which will in any way increase the risk of fire or result in an increase of any insurance premiums payable to the corporation;
- (h) use any toilets, sinks, tubs, drains and other plumbing fixtures for any purpose other than those for which they are constructed;
- (i) hang or place on the common property or within a unit anything that is, in the opinion of the majority of the members of the board, aesthetically displeasing when viewed from outside the units;
- (j) leave articles belonging to his household on the common property when those articles are not in actual use;
- (k) obstruct any sidewalks, walkways, passages, driveways and parking areas other than for ingress and egress to and from his unit;
- (l) use any portion of the common property except in accordance with the by-laws.

Occupants

3. An owner shall ensure that his occupants comply with those requirements that the owner must comply with under section 2.

27. (1) *Subject to subsection (2), where*

- (a) *a corporation as defined in The Condominium Property Act existed at the commencement of this Act, and*
- (b) *that corporation was regulated by the by-laws set forth in Schedule A and Schedule B of The Condominium Property Act as those by-laws existed immediately prior to the commencement of this Act,*

that corporation shall continue to be regulated by those by-laws and for that purpose those by-laws are deemed not to have been repealed by this Act.

(2) A corporation referred to in subsection (1) may, by a resolution passed at a properly convened meeting of the corporation by a

27. Existing corporations.

majority of not less than three-fourths of all the owners representing not less than three-fourths of the total unit factors for all the units, repeal its present by-laws and adopt the by-laws enacted by section 26 of this Act.

28. This Act comes into force on a date to be fixed by Proclamation.

