

1983 BILL 71

First Session, 20th Legislature, 32 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 71

CONDOMINIUM PROPERTY AMENDMENT ACT, 1983

THE MINISTER OF CONSUMER AND CORPORATE AFFAIRS

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 71

1983

CONDOMINIUM PROPERTY AMENDMENT ACT, 1983

(Assented to _____, 1983)

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

1 *The Condominium Property Act is amended by this Act.*

2 *Section 1 is amended*

(a) by renumbering clause (a) as clause (a.1) and by adding the following before clause (a.1):

(a) "bare land unit" means a unit defined in clause (v)(ii);

(b) by repealing clause (r) and substituting the following:

(r) "residential unit" means

(i) in the case of a unit that is situated within a building, a unit that is used or intended to be used for residential purposes, and

(ii) in the case of a bare land unit, a unit that is used or intended to be used for residential purposes or that has been represented by a developer as being intended to be used for residential purposes;

(c) by repealing clause (v) and substituting the following:

(v) "unit" means

(i) in the case of a building, a space that is situated within a building and described as a unit in a condominium plan by reference to floors, walls and ceilings within the building, and

(ii) in the case other than that of a building, land that is situated within a parcel and described as a unit in a condominium plan by reference to boundaries governed by monuments placed pursuant to the provisions of the *Surveys Act* respecting subdivision surveys;

Explanatory Notes

1 This Bill will amend chapter C-22 of the Revised Statutes of Alberta 1980.

2 Section 1(1)(r) and (v) presently read:

1(1) In this Act,

(r) "residential unit" means a unit used or intended to be used for residential purposes;

(v) "unit" means a space that is situated within a building and described in a condominium plan by reference to floors, walls and ceilings within the building;

3 *Section 2(1) is amended by adding “or land” after “building”.*

4 *Section 6(1) is amended*

(a) *in clause (b) by adding “, if any,” after “building”;*

(b) *by repealing clause (f) and substituting the following:*

(f) **where a building is to be divided into units, show the approximate floor area of each unit,**

(f.1) **where land is to be divided into bare land units, show the approximate area of each unit,**

5 *Section 8 is amended*

(a) *by repealing subsection (1) and substituting the following:*

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

(a) **a certificate of a land surveyor registered under the *Land Surveyors Act* stating**

(i) **that the boundaries of the parcel have been established or re-established in accordance with the *Surveys Act*, and**

(ii) **where there is a building shown on the plan, that the building is within the external surface boundaries of the parcel that is the subject of the plan and, if eaves or guttering project beyond those external boundaries, that an appropriate easement has been granted as an appurtenance to the parcel,**

and

(b) **where there is a building shown on the plan that is to contain units,**

(i) **a certificate of**

3 Section 2 presently reads:

2(1) A building may be designated as a unit or part of a unit or divided into 2 or more units by the registration of a condominium plan under this Act.

(2) The Registrar shall not register a condominium plan unless that condominium plan describes 2 or more units in it.

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

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

(5) Notwithstanding subsection (4), if 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 6(1)(b) and (f) presently read:

6(1) Every plan presented for registration as a condominium plan shall

(b) delineate the external surface boundaries of the parcel and the location of the building in relation to them,

(f) show the approximate floor area of each unit,

5 Section 8(1) and (2) presently read:

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 registered under the Land Surveyors Act stating 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 those external boundaries, that an appropriate easement has been granted as an appurtenance of the parcel,

(b) a certificate of

(i) a registered architect, visiting project architect, architects corporation or joint firm under the Architects Act,

(ii) an Alberta land surveyor registered under the Land Surveyors Act,

(iii) a professional engineer registered or licensed under the Engineering, Geological and Geophysical Professions Act, or

(iv) a holder of a permit issued under the Engineering, Geological and Geophysical Professions Act, if that holder is authorized to engage in the practice of engineering,

stating that the units shown in the plan are the same as those existing, and

(A) a registered architect, visiting project architect, architects corporation or joint firm under the *Architects Act*,

(B) an Alberta land surveyor registered under the *Land Surveyors Act*,

(C) a professional engineer registered or licensed under the *Engineering, Geological and Geophysical Professions Act*, or

(D) a holder of a permit issued under the *Engineering, Geological and Geophysical Professions Act*, if that holder is authorized to engage in the practice of engineering,

stating that the units shown in the plan are the same as those existing,

and

(ii) a certificate of the local authority or of a person designated by the local authority stating that the proposed division of the building, as illustrated in the plan, has been approved by the local authority.

(b) in subsection (2) by striking out “subsection (1)(c)” and substituting “subsection (1)(b)(ii)”.

6 *Section 10(b) is amended*

(a) in subclause (i) by adding “where there is a building,” before “the interior”;

(b) in subclause (ii) by adding “or on” after “residing in”;

(c) in subclause (vi) by adding “where there is a building,” before “the exterior”.

7 *Section 11(1)(a) and (b) are amended by adding “that the developer is obligated to provide” after “improvements” wherever it occurs.*

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

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

(a) may, with respect to a building that 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, zoning by-law or land use by-law, as the case may be, and

(ii) any permit issued under that scheme or by-law,

that existed at the time the building permit was issued.

6 Section 10(b)(i),(ii) and (vi) presently read:

10 Every developer who enters into a purchase agreement shall include in the purchase agreement the following:

(b) a description, drawing or photograph showing

(i) the interior finishing of and all major improvements to the common property located within a building,

(ii) the recreational facilities, equipment and other amenities to be used by the persons residing in the residential units,

(vi) the exterior finishing of the building,

7 Section 11(1) presently reads:

11(1) A developer or a person acting on his behalf shall hold in trust all the money paid by a purchaser under a purchase agreement, other than rents, security deposits or mortgage advances, and

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

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

(i) not more than 50% of that money less the interest earned on it may be paid to the developer on delivery of the title document to the purchaser, and

8 Section 16 is amended by striking out “a building contains premises that” and substituting “premises”.

9 Section 17 is amended by adding “and” at the end of clause (a) and by repealing clauses (b) and (c) and substituting the following:

- (b) in the case of a unit located in a building,
 - (i) in favour of the owner of the unit, and as appurtenant to the unit, an easement for the shelter of the unit by the common property and by every other unit capable of affording shelter, and
 - (ii) in favour of the owner of the unit, and as appurtenant to the unit, easements for the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air and other services including telephone, radio and television services through or by means of any pipes, wires, cables or ducts for the time being existing in the parcel to the extent to which those pipes, wires, cables or ducts are capable of being used in connection with the enjoyment of the unit.

10 Section 18(1) is amended by adding “and” at the end of clause (a) and by repealing clauses (b) and (c) and substituting the following:

- (b) in the case of a unit located in a building,
 - (i) as against the owner of the unit, an easement, to which the unit is subject, to provide shelter to the common property and to every other unit capable of enjoying the shelter, and
 - (ii) as against the owner of the unit, easements, to which the unit is subject, for the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air and other services including telephone, radio and television services through or by means of any pipes, wires, cables or ducts for the time being existing within the unit, as appurtenant to the common property and also to every other unit capable of enjoying those easements.

(ii) on 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.

8 Section 16 presently reads:

16 If a building contains premises that are

(a) rented for residential purposes to a tenant who is not a party to a purchase agreement, and

(b) not included in a condominium plan,

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

9 Section 17 presently reads:

17 After the registration of a condominium plan, there is implied in respect of each unit shown in it,

(a) in favour of the owner of the unit and as appurtenant to the unit, an easement for the subjacent and lateral support of the unit by the common property and by every other unit capable of affording support,

(b) in favour of the owner of the unit, and as appurtenant to the unit, an easement for the shelter of the unit by the common property and by every other unit capable of affording shelter, and

(c) in favour of the owner of the unit, and as appurtenant to the unit, easements for the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air and other services including telephone, radio and television services through or by means of any pipes, wires, cables or ducts for the time being existing in the parcel to the extent to which those pipes, wires, cables or ducts are capable of being used in connection with the enjoyment of the unit.

10 Section 18(1) presently reads:

18(1) After the registration of a condominium plan, there is implied in respect of each unit shown in it,

(a) as against the owner of the unit, an easement, to which the unit is subject, for the subjacent and lateral support of the common property and of every other unit capable of enjoying support,

(b) as against the owner of the unit, an easement, to which the unit is subject, to provide shelter to the common property and to every other unit capable of enjoying the shelter, and

(c) as against the owner of the unit, easements, to which the unit is subject, for the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air and other services including telephone, radio and television services through or by means of any pipes, wires, cables or ducts for the time being existing within the unit, as appurtenant to the common property and also to every other unit capable of enjoying those easements.

11 Section 29(1) and (2)(b) are amended by adding “or on” after “residing in”.

12 Section 38(1) is amended

(a) in clause (a) by adding “where a building is divided into units,” before “shall place”;

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

(a.1) where a parcel is divided into bare land units, shall place and maintain insurance on the common property against loss resulting from destruction or damage caused by fire and those other perils specified in the by-laws,

13 Section 44(2), (3) and (5) are amended by adding “or on” after “residing in”.

11 Section 29(1) and (2)(b) presently read:

29(1) If an owner, tenant or other person residing in a residential unit contravenes a by-law, the corporation may take proceedings under Part 4 of the Provincial Court Act to recover from the owner or tenant or both a penalty of not more than \$200 in respect of that contravention.

(2) In an action under subsection (1), the corporation must establish to the satisfaction of the provincial judge hearing the matter that

(b) the by-law was contravened by the owner, tenant or other person residing in the residential unit.

12 Section 38(1) presently reads:

38(1) A corporation

(a) shall place and maintain insurance on the units, other than improvements made to the units by the owners, and the common property against loss resulting from destruction or damage caused by fire and those other perils specified in the by-laws,

(b) shall, if required to do so by by-law, place and maintain insurance on the improvements made to the units by the owners against loss resulting from destruction or damage caused by fire and those other perils specified in the by-laws, and

(c) may place and maintain insurance on the units and the common property or either of them 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 and the common property.

13 Section 44(2), (3) and (5) presently read:

(2) If an owner of a residential unit rents his unit it is a condition of that tenancy, notwithstanding anything in the tenancy agreement, that the persons residing in that unit shall not

(a) cause damage to the real or personal property of the corporation or the common property, or

(b) contravene the by-laws.

(3) The corporation may require an owner who rents his residential unit to pay to and maintain with the corporation a deposit that the corporation may use for

(a) the repair or replacement of the real and personal property of the corporation or of the common property, and

(b) the maintenance, repair or replacement of any common property that is subject to a lease granted to the owner of the unit under section 41,

that is damaged, destroyed, lost or removed, as the case may be, by a person residing in the rented unit.

(5) The owner of a residential unit shall give the corporation written notice of the name of the tenant residing in the unit within 20 days from the commencement of the tenancy.

14 Section 45(1) is amended by adding “or on” after “residing in”.

15 Section 47(1), (3) and (4) are amended by adding “or on” after “residing in” wherever it occurs.

14 Section 45(1) presently reads:

45(1) The corporation may give a tenant renting a residential unit a notice to give up possession of that unit, if a person residing in that unit

(a) causes damage, other than normal wear and tear, to the real or personal property of the corporation or to the common property, or

(b) contravenes a by-law.

15 Section 47(1), (3) and (4) presently read:

47(1) If a person residing in a residential unit that is being rented

(a) has caused or is causing excessive damage to the real or personal property of the corporation or to the common property, or

(b) is a danger to or is intimidating persons who are residing in the other residential units located on the parcel,

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 45 or by the landlord under the tenancy agreement, apply by originating notice to the Court for an order requiring the tenant to give up immediate possession of that residential unit.

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

(a) setting forth

(i) the damage to the real or personal property of the corporation or the common property, and

(ii) the nature of the danger to or intimidation of persons residing in the other residential units,

or either of them, and

(b) stating any other relevant facts.

(4) On hearing the application, the Court may make an order

(a) requiring the tenant to give up possession of the residential unit, if the Court is satisfied that

(i) a person residing in that residential unit has caused or is causing excessive damage to the real or personal property of the corporation or the common property or is a danger to or is intimidating persons residing in the other units, and

(ii) there are reasonable and probable grounds to believe that further damage may be done or that the danger or intimidation will not cease if the tenant is allowed to remain in possession of the rented unit,

and

(b) fixing the day on which the tenant is required to give up possession of the rented unit,

and make any other order that it considers proper in the circumstances.

16 Section 50(1) is amended by adding “that is designated as a unit or part of a unit or that is divided into units” after “building”.

17 Section 51 is amended by adding “or parcel” after “building”.

18 Section 52(1) and (2) are amended by adding “or parcel” after “building”.

19 Section 53(1) is amended by adding “or parcel” after “building”.

20 Section 54(1) is amended by adding “or parcel” after “building”.

21(1) Appendix 1 is amended by this section.

(2) Section 2 is amended

(a) in clause (a) by adding “in or on” after “enter”;

(b) in clause (a)(ii) by adding “or on” after “existing in”;

(c) in clause (b)(i) by adding “or parcel” after “building”.

(3) Section 37 is amended

(a) in subsection (1)(a) by adding “or on” after “present in”;

(b) in subsection (2)(d) by adding “or on” after “noise in”;

(c) in subsection (2)(e) by adding “or on” after “animal in”;

(d) in subsection (2)(i) by adding “or on” after “within”.

(4) The amendments enacted by this section apply only to a corporation that was constituted after the coming into force of this section.

16 Section 50(1) presently reads:

50(1) If a building is damaged but the condominium status is not terminated pursuant to section 51 or 52, an application to settle a scheme may be made to the Court by the corporation, an owner, a registered mortgagee of a unit or a vendor under an agreement for sale of a unit.

17 Section 51 presently reads:

51 The condominium status of a building may be terminated by a unanimous resolution.

18 Section 52(1) and (2) presently read:

52(1) An application to terminate the condominium status of a building may be made to the Court by the corporation, an owner, 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 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.

19 Section 53(1) presently reads:

53(1) On the condominium status of the building being terminated under section 51 or 52, the corporation shall forthwith file with the Registrar a notice of the termination in the prescribed form.

20 Section 54(1) presently reads:

54(1) When the condominium status of a building is being terminated the corporation may be directed, by a unanimous resolution, to transfer the parcel or any part of it.

21 Section 2(a) and (b) and section 37(1)(a) and (2)(d), (e) and (i) of Appendix 1 presently read:

APPENDIX 1

(Section 27)

BY-LAWS OF THE CORPORATION

Duties of the Owner

2 *An owner*

(a) shall 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

(i) inspecting the unit,

(ii) maintaining, repairing or replacing pipes, wires, cables and ducts existing in the unit and used or capable of being used in connection with the enjoyment of any other unit or common property,

(iii) maintaining, repairing or replacing common property, or

(iv) ensuring that the by-laws are being observed,

*In accordance with section 4(1) of the Interpretation Act,
this Bill comes into force on the date it receives Royal
Assent.*

(b) shall forthwith

(i) carry out all work that may be required pursuant to these by-laws or as required by a local authority or other public authority in respect of his unit, other than any work for the benefit of the building generally, and

(ii) pay all rates, taxes, charges and assessments that may be payable in respect of his unit,

Restrictions in Use

37(1) In this section,

(a) "occupant" means a person present in a unit or in or on the real or personal property of the corporation or the common property with the permission of an owner;

(2) An owner shall not

(d) make undue noise in his unit or on or about real property of the corporation or the common property;

(e) keep an animal in his unit or on the real property of the corporation or the common property after a date specified in a notice given to him by the board;

(i) hang or place on the real property of the corporation or the common property or within a unit anything that is, in the opinion of the board, aesthetically displeasing when viewed from outside the units;