

1996 BILL 23

Fourth Session, 23rd Legislature, 45 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 23

**CONDOMINIUM PROPERTY
AMENDMENT ACT, 1996**

MRS. LAING

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 23
Mrs. Laing

BILL 23

1996

CONDOMINIUM PROPERTY AMENDMENT ACT, 1996

(Assented to _____, 1996)

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

Amends RSA
1980 cC-22

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

2 *Section 1 is amended*

(a) *in subsection (1)*

(i) *by repealing clause (h) and substituting the following:*

(h) “developer” means a person who, alone or in conjunction with other persons, sells or offers for sale to the public units or proposed units that have not previously been sold to the public by means of an arm’s length transaction;

(ii) *in clause (i) by striking out “residential”;*

(iii) *by repealing clause (j);*

(iv) *in clause (k) by striking out “associated with the residential units” wherever it occurs;*

(v) *by adding the following after clause (l):*

(l.1) “municipal authority” means

(i) a municipal authority as defined in the
Municipal Government Act, or

Explanatory Notes

1 Amends chapter C-22 of the Revised Statutes of Alberta 1980.

2 Section 1 presently reads:

1(1) In this Act,

- (a) "bare land unit" means a unit defined in clause (v)(ii);*
- (a.1) "board" means the board of a corporation as provided for in section 23;*
- (b) "building" means one or more buildings on the same parcel;*
- (c) "by-laws" means the by-laws of a corporation as amended from time to time and includes any by-laws passed in substitution for them;*
- (d) "common property" means so much of the parcel as is not comprised in a unit shown in a condominium plan but does not include land shown on the condominium plan that has been provided for the purposes of roads, public utilities and reserve land under Part 17 of the Municipal Government Act;*
- (e) "condominium plan" means a plan registered in a land titles office that complies with section 6 and includes a plan of redivision registered under section 15;*
- (f) "corporation" means a body incorporated by section 20;*

(ii) the Minister of the Crown in right of Canada charged with the administration of the *National Parks Act* (Canada), in the case of a National Park;

(vi) in clause (p) by striking out “residential” wherever it occurs;

(vii) in clause (s)(ii) by striking out “signed” and substituting “agreed to in writing”;

(viii) in clause (t) by striking out “, in respect of a residential unit,”;

(ix) by repealing clause (u);

(b) by adding the following after subsection (1):

(1.1) In this Act a reference to an arm’s length transaction is a reference to a transaction that is conducted in an open market between willing parties to the transaction where the consideration paid is competitive and not unreasonable having regard to open market conditions.

- (g) *"Court" means the Court of Queen's Bench;*
- (h) *"developer" means a person who, alone or in conjunction with other persons, sells or offers for sale to the public*
 - (i) *residential units, or*
 - (ii) *proposed residential units,**that have not previously been sold to the public;*
- (i) *"landlord" means an owner of a residential unit that is being rented and includes a person acting on behalf of the owner;*
- (j) *"local authority" means*
 - (i) *a city, town, village or municipal district,*
 - (ii) *the Minister of Municipal Affairs, in the case of an improvement district or a special area, or*
 - (iii) *the Minister of the Crown in right of Canada charged with the administration of the National Parks Act (Canada), in the case of a National Park;*
- (k) *"management agreement" means an agreement entered into by a corporation governing the general control, management and administration of*
 - (i) *the real and personal property of the corporation associated with the residential units, and*
 - (ii) *the common property associated with the residential units;*
- (l) *"Minister" means the Minister determined under section 16 of the Government Organization Act as the Minister responsible for this Act;*
- (m) *"municipality" means the area of a city, town, village, municipal district, improvement district, special area or National Park;*
- (n) *"owner" means a person who is registered as the owner of*
 - (i) *the fee simple estate in a unit, or*
 - (ii) *the leasehold estate in a unit when the parcel on which the unit is located is held under a lease and a certificate of title has been issued under section 3(1)(b) in respect of that lease;*
- (o) *"parcel" means the land comprised in a condominium plan;*

- (p) *"purchase agreement" means an agreement with a developer whereby a person purchases a residential unit or proposed residential unit or acquires a right to purchase a residential unit or proposed residential unit;*
- (q) *"recreational agreement" means an agreement entered into by a corporation that allows*
 - (i) *persons, other than the owners, to use recreational facilities located on the common property, or*
 - (ii) *the owners to use recreational facilities not located on the common property;*
- (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;*
- (s) *"special resolution" means a resolution*
 - (i) *passed at a properly convened meeting of a corporation by a majority of not less than 75% of all the persons entitled to exercise the powers of voting conferred by this Act or the by-laws and representing not less than 75% of the total unit factors for all the units, or*
 - (ii) *signed by not less than 75% of all the persons who, at a properly convened meeting of a corporation, would be entitled to exercise the powers of voting conferred by this Act or the by-laws and representing not less than 75% of the total unit factors for all the units;*
- (t) *"title document" means, in respect of a residential unit, a transfer of the unit that is registrable under the Land Titles Act;*
- (u) *"unanimous resolution" means a resolution*
 - (i) *passed unanimously at a properly convened meeting of the corporation by all the persons entitled to exercise the powers of voting conferred by this Act or the by-laws and representing the total unit factors for all the units, or*
 - (ii) *signed by all persons who, at a properly convened meeting of a corporation, would be entitled to exercise the powers of voting conferred by this Act or the by-laws;*

3 *Section 3(2) is repealed and the following is substituted:*

(2) Subject to subsection (2.1), no more than one unit may be included in one certificate of title and no other land may be included in the same certificate of title with a unit.

(2.1) In addition to the unit referred to in subsection (2), an owner's certificate of title may include

- (a) the owner's share in the common property, and
- (b) if the plan contains other units that are used for parking, storage or any other ancillary purpose, those other units owned by that owner.

4 *Section 5 is amended by renumbering it as section 5(1) and by adding the following after subsection (1):*

(2) Where payment is made to the holder of the interest referred to in subsection (1) of an amount that is sufficient to discharge the owner's proportion of the liability with respect to that interest that relates to the owner's unit and the owner's share in the common property, the holder of the interest shall, on the demand of the owner, provide to the owner a discharge of the interest from the owner's unit and the owner's share in the common property.

(3) The rights of an owner under subsection (2) do not apply to

- (a) a developer, or

(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;*

(w) “unit factor” means the unit factor for a unit as specified or apportioned in accordance with section 6(g) or 15(5), as the case may be.

(2) *Other expressions used in this Act and not defined in subsection (1) have the same meanings as may be assigned to them in the Land Titles Act.*

3 Section 3(2) presently reads:

(2) No more than one unit may be included in one certificate of title and no other land, except the owner's share in the common property, may be included in the same certificate of title with a unit.

4 Section 5 presently reads:

5 Except to the extent that an interest endorsed on a certificate of title relates to that particular unit, the owner of the unit is only liable in respect of that interest in proportion to the unit factor for his unit.

- (b) any person who acquired a unit from a developer in a transaction that was not at arm's length.

5 *Section 6 is amended*

(a) in subsection (1)

(i) by adding the following after clause (f.1):

- (f.2) where in accordance with section 41 an owner may be permitted to exercise exclusive possession in respect of an area or areas of common property, delineate to the satisfaction of the Registrar the boundaries of the area of common property over which the owner may be permitted to exercise exclusive possession,
- (f.3) have endorsed on it a certificate of an engineer stating whether there are any post tension cables located anywhere on or within the property for which the plan is presented for registration,

(ii) by adding the following after clause (g):

- (g.1) where the property for which the plan is presented for registration is to be developed into units and common property in phases, contain the information required under the regulations with respect to the development of property in phases,

(b) by repealing subsection (2) and substituting the following:

- (2)** Where, with respect to units included in a condominium plan, there are qualifications or restrictions respecting the use of a unit that are not prohibited under the law, those qualifications or restrictions may be endorsed on the condominium plan.

(c) in subsection (3) by striking out "local authority" and substituting "municipal authority".

5 Section 6 presently reads:

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

- (a) be described in the heading of the plan as a condominium plan,*
- (b) delineate the external surface boundaries of the parcel and the location of the building, if any, in relation to them,*
- (b.1) except where the condominium plan is to divide a building referred to in section 1.1(2), delineate that portion of the land that is to be provided for the purposes of roads, public utilities and reserve land under Part 17 of the Municipal Government Act,*
- (c) bear a statement containing those particulars as may be necessary to identify the title to the parcel,*
- (d) include a drawing illustrating the units and distinguishing the units by numbers or other symbols.*
- (e) define the boundaries of each unit,*
- (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,*
- (g) have endorsed on it a schedule specifying in whole numbers the unit factor for each unit in the parcel,*
- (h) be signed by the owner of the property,*
- (i) have endorsed on it the address at which documents may be served on the corporation concerned in accordance with section 63, and*
- (j) contain any other features prescribed by the regulations.*

(2) If a plan presented for registration as a condominium plan includes residential units, that plan shall, in addition to meeting the requirements of subsection (1), delineate to the satisfaction of the Registrar the boundaries of the areas that are or may be leased under section 41 to an owner of a residential unit.

6 *Section 7(2) is repealed and the following is substituted:*

(2) Notwithstanding subsection (1),

- (a) all doors and windows of a unit that are located on interior walls of a building are part of the unit unless otherwise stipulated in the condominium plan, and
- (b) all doors and windows of a unit that are located on exterior walls of a building are part of the common property unless otherwise stipulated in the condominium plan.

(2.1) For the purposes of subsection (2), a reference

- (a) to a door includes the door, the door frame and the door assembly components, if any, but does not include the door casing, trim or mouldings, and
- (b) to a window includes the glazing, the window frame and the window assembly components, if any, but does not include the window casing, trim or mouldings.

7 *Section 8 is amended*

(a) *in subsection (1)(a)*

(i) *by striking out “and” at the end of subclause (i) and by adding the following after subclause (i):*

(i.1) *that there are not any projections from other property infringing on the external boundaries of the parcel, or if there are projections from other property infringing on the external boundaries of the parcel, that an appropriate easement exists in respect of the parcel for those projections, and*

(ii) *in subclause (ii) by striking out “eaves or guttering” and substituting “any projections”;*

(b) *in subsection (1)(b)(ii) by striking out “local authority” wherever it occurs and substituting “municipal authority”;*

(c) *in subsection (2) by striking out “local authority” and substituting “municipal authority”.*

(3) The Registrar shall, within 28 days from the day a condominium plan is registered, mail to the local authority of the municipality in which the parcel is located, a copy of the registered condominium plan.

6 Section 7(2) presently reads:

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

7 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 a land surveyor registered, or a holder of a permit issued, 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

8 The heading preceding section 9 is repealed and the following is substituted:

- (A) *a registered architect, visiting project architect, architects corporation or joint firm under the Architects Act,*
- (B) *an Alberta land surveyor registered, or a holder of a permit issued, 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.*

(2) *If an application is made for a certificate under subsection (1)(b)(ii), 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.

8 The heading preceding section 9 presently reads:

Sale of Residential Units by Developers

Sale of Units by Developers

Fair dealing

8.1 Every agreement to sell a unit imposes on the developer selling the unit and the purchaser of the unit a duty of fair dealing with respect to the entering into, performance and enforcement of the agreement.

9 Section 9 is amended

(a) in subsection (1) by striking out “residential” wherever it occurs;

(b) by repealing subsection (3) and substituting the following:

(3) Subject to subsection (4), a purchaser who purchases a residential unit pursuant to this section may, by providing written notice to the developer and without incurring any liability for doing so, rescind the purchase agreement within 10 days from the date the purchase agreement was executed by the parties to it.

(c) by adding the following after subsection (5):

(6) A developer shall provide to a purchaser of a unit a certificate of occupancy issued by a municipal authority prior to or at the time that the purchaser takes possession of the unit or proposed unit.

9 Section 9 presently reads:

9(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) the lease of the parcel, if the parcel on which the unit is located is held under a lease and the certificate of title to the unit or proposed unit has been or will be issued under section 3(1)(b),*
- (f) any mortgage that affects or proposed mortgage that will affect the title to the residential unit or proposed residential unit or, in respect of that mortgage or proposed mortgage, a notice prescribed under subsection (2), and*
- (g) the condominium plan or proposed condominium plan.*

(2) A developer may deliver to the purchaser in respect of a mortgage or proposed mortgage a written notice stating

- (a) the maximum principal amount available under the mortgage,*
- (b) the maximum monthly payment that may be paid under the mortgage,*
- (c) the amortization period,*
- (d) the term,*
- (e) the interest rate or the formula, if any, for determining the interest rate, and*

10 Section 10 is amended

(a) in clause (a)

(i) by striking out “in red ink”;

(ii) by adding “in bold face, in upper case and in larger print than the rest of the purchase agreement” after “first page of the purchase agreement”;

(b) in clause (b)

(i) by striking out “a description” and substituting “where the units and the common property are not substantially completed at the time that the purchase agreement is entered into, a description”;

(ii) by repealing subclauses (i) and (ii) and substituting the following:

(i) where there is a building, the exterior and interior finishing of and all major improvements to the common property,

(i.1) any significant utility installations, major easement areas, retaining walls and other significant features,

(ii) the recreational facilities, equipment and other amenities to be used by the owners of the units,

(c) in clause (c) by striking out “in respect of the residential unit” and substituting “that has been determined on a reasonable economic basis in respect of the unit”.

(f) *the prepayment privileges, if any.*

(3) *Subject to subsection (4), a purchaser of a residential unit under this section may, without incurring any liability for doing so, rescind the purchase agreement within 10 days from the date the purchase agreement was executed by the parties to it.*

(4) *A purchaser may not rescind the purchase agreement under subsection (3) if all the documents required to be delivered to the purchaser under subsection (1) have been delivered to the purchaser not less than 10 days prior to the execution of the purchase agreement by the parties to it.*

(5) *If a purchase agreement is rescinded under subsection (3), the developer shall, within 10 days from his receipt of a written notice by the purchaser of the rescission, return to the purchaser all of the money paid in respect of the purchase of the residential unit.*

10 Section 10 presently reads:

10 Every developer who enters into a purchase agreement shall include in the 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 as follows:*

“The purchaser may, without incurring any liability for doing so, rescind this agreement within 10 days of its execution by the parties to it unless all of the documents required to be delivered to the purchaser under section 9 of the Condominium Property Act have been delivered to the purchaser not less than 10 days prior to the execution of this agreement by the parties to it.”;

(b) *a description, drawing or photograph showing*

(i) *where there is a building, 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 or on the residential units,*

(iii) *the equipment to be used for the maintenance of the common property,*

(iv) *the location of roadways, walkways, fences, parking areas and recreational facilities,*

(v) *the landscaping, and*

(vi) *where there is a building, the exterior finishing of the building.*

11 Section 11 is amended

(a) in subsection (7) by striking out “This” and substituting “Subject to subsection (8), this”;

(b) by adding the following after subsection (7):

(8) Where

(a) money is paid to which subsection (7) applies, and

(b) the amount paid or any subsequent amount paid exceeds the limits of the protection against loss provided for under the plan, agreement, scheme or arrangement,

those amounts that exceed the limits of the protection against loss under the plan, agreement, scheme or arrangement shall be held in trust under this section.

(9) For the purpose of this section, “common property” includes facilities and property that are intended for common use by the owners notwithstanding that the facilities or property may be located in or comprise a unit.

12 Section 14 is amended

(a) in subsections (1) and (2) by striking out “residential” wherever it occurs;

(b) in subsection (3)(a) by striking out “2 years have” and substituting “one year has”.

as they will exist when the developer has fulfilled his obligations under the purchase agreement;

- (c) the amount or estimated amount of the monthly unit contributions in respect of the residential unit;*
- (d) the unit factor of the unit and the basis of unit factor apportionment for all units comprised in the condominium plan.*

11 Section 11(7) presently reads:

(7) This section does not apply in respect of money paid to a developer, or to a person acting on behalf of a developer, under a purchase agreement if that money is held under the provisions of a plan, agreement, scheme or arrangement approved by the Minister that provides for the receipt, handling and disbursing of all or a portion of that money or indemnifies against loss of all or a portion of that money or both.

12 Section 14 presently reads:

14(1) In this section, "developer's management agreement" means a management agreement that was entered into by a corporation at a time when its board was comprised of persons who were elected to the board while the majority of residential units were owned by a developer.

(2) Subject to subsection (3), a corporation may, notwithstanding anything contained in a developer's management agreement or a collateral agreement, terminate a developer's management agreement at any time after its board is comprised of persons who were elected to the board after the majority of the residential units were owned by persons other than a developer.

(3) A developer's management agreement

- (a) may not be terminated under subsection (2) without cause until 2 years have elapsed from the day that the*

13 *The following is added after section 14:*

Phased Development

Development
of units in
phases

14.1 Subject to the regulations, any building or land that is subject to a condominium plan or a proposed condominium plan may be developed in phases.

14 *The heading preceding section 15 is repealed and the following is substituted:*

Modification of Condominium Plans

15 *Section 15 is amended*

(a) *in subsection (1) by striking out “local authority” and substituting “municipal authority”;*

(b) *by adding the following after subsection (1):*

(1.1) Notwithstanding subsection (1), any owner or owners may, in accordance with the regulations and without the necessity of registering a condominium plan, modify an existing condominium plan by amending that condominium plan, if the modification consists only of the consolidation of 2 or more units that have adjacent walls, ceilings, floors or boundaries between them.

16 *Section 16 is repealed and the following is substituted:*

Conversion to
condominium
units

16(1) If premises are

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

(b) not included in a condominium plan,

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

agreement was entered into, except when the agreement permits termination at an earlier date, and

(b) may only be terminated under subsection (2) on the corporation giving 60 days' written notice to the other party to the agreement of its intention to terminate the agreement,

and the corporation is not liable to the other party to the agreement by reason only of the agreement being terminated under this section.

13 Phased development under a condominium plan.

14 The heading preceding section 15 presently reads:

Redivision

15 Section 15(1) presently reads:

15(1) Any owner or owners may, with the approval of the local authority, redivide his or their units by registering a condominium plan relating to the unit or units so redivided in the manner provided by this Act for the registration of condominium plans.

16 Section 16 presently reads:

16 If premises 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.

(2) Notwithstanding subsection (1), a developer or a person acting on a developer's behalf may sell premises referred to in subsection (1) prior to the registration at a land titles office of a condominium plan that includes those premises if it is a condition of the purchase agreement that the condominium plan is to be registered at the land titles office prior to the purchaser's being obliged to take possession of the unit.

17 Section 17 is repealed and the following is substituted:

Easements in
favour of
owner

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, 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, and
- (c) in the case of a unit located in a building, 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.

18 Section 18(1) is repealed and the following is substituted:

Easements
against owner

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,

17 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, and*
- (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,*

18 Section 18 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, and*
- (b) in the case of a unit located in a building,*

- (b) 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, and
- (c) in the case of a unit located in a building, 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.

19 Section 19 is amended

(a) in subsection (1) by striking out “as to user”;

(b) by adding the following after subsection (2):

(3) Except as otherwise permitted in this section, no person may enter a unit under subsection (2) without the consent of the owner of the unit or of an adult person lawfully on the premises that comprise the unit.

(4) A person may enter a unit under subsection (2) without consent or notice if that person has reasonable grounds to believe that an emergency requires that person to enter the premises to replace, renew or restore any thing that the dominant tenement is entitled to benefit from.

(5) Subject to subsection (6), a person may enter a unit under subsection (2) without consent but after notice to the owner or person in possession of the unit to replace, renew or restore any thing that the dominant tenement is entitled to benefit from.

(6) A person is not entitled to enter a unit under subsection (5) unless

- (a) the notice is served on the owner of the unit or an adult person in possession of the unit at least 24 hours before the time of entry,
- (b) the entry is made on a day that is not

- (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,*

(2) When an easement is implied by this section, the owner of any utility service who is providing his service to the parcel, or to any unit on it, is entitled to the benefit of any of those easements that are appropriate to the proper provision of that service, but not to the exclusion of the owner of any other utility service.

19 Section 19 presently reads:

19(1) Easements or restrictions as to user implied or created by this Act or the by-laws take effect and are enforceable

- (a) without any memorial or notification on that part of the register constituting titles to the dominant or servient tenements, and*
- (b) without any express indication of those tenements.*

(2) All ancillary rights and obligations reasonably necessary to make easements effective apply in respect of easements implied by this Act, including the right of an owner of a dominant tenement to enter a servient tenement and replace, renew or restore any thing the dominant tenement is entitled to benefit from.

(i) a holiday, except that the person may enter on a Sunday if the day of religious worship of the adult person in possession of the unit is not Sunday and that adult person has provided to the person wishing to enter the unit a written notice of that adult person's day of religious worship, or

(ii) the day of religious worship of the adult person in possession of the unit if that day is not Sunday and that person has provided to the person wishing to enter the unit a written notice of that day,

and

(c) the entry is between 8 a.m. and 8 p.m.

(7) A notice under subsection (5) must

(a) be in writing,

(b) state the reason for the entry, and

(c) name a date and time of entry that comply with subsection (6).

0 Section 20 is amended

(a) in subsection (1) by striking out "The Owners: Condominium Plan No....." and substituting "Condominium Corporation No.....";

(b) by adding the following after subsection (3):

(3.1) Nothing in this Act shall be construed so as to prohibit a corporation from acting by means of agents or its employees.

1 Section 21 is amended

(a) in subsection (2)

(i) in clause (a) by striking out "unanimous" and substituting "special";

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

20 Section 20(1) presently reads:

20(1) On the registration of a condominium plan, there is constituted a corporation under the name "The Owners: Condominium Plan No." (the number to be specified being the number given to the plan on registration).

21 Section 21 presently reads:

21(1) The voting rights of the owner of a unit are determined by the unit factor for his unit.

(2) When 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.

(b) in other cases, is exercisable

(i) by the registered mortgagee first entitled in priority, or

(ii) if neither the registered mortgagee first entitled in priority nor the owner exercises the power of voting, by the subsequent registered mortgagees in order of their priority as among themselves,

and may not be exercised by the owner if the mortgagee who is entitled to vote is present personally or by proxy.

(b) *in subsection (3) by adding “at the corporation’s address for service” after “to the corporation”;*

(c) *by adding the following after subsection (4):*

(5) Notwithstanding anything in this section, unless the board by resolution otherwise consents, neither an owner nor a mortgagee is entitled to exercise the power of voting conferred on the owner by this Act or the regulations where

(a) any contribution payable in respect of the owner’s unit, or

(b) any other obligation owing to the corporation in respect of the owner’s unit or the common property,

is in arrears for more than 30 days prior to the day that the power of voting may be exercised.

22 *Section 23 is amended*

(a) *in subsection (1) by striking out “board of managers” and substituting “board of directors”;*

(b) *by adding the following after subsection (1):*

(1.1) Every member of a board shall exercise the powers and discharge the duties of the office of member of the board honestly and in good faith.

(1.2) Where a member of the board has a material interest in any agreement, arrangement or transaction to which the corporation is or is to become a party, that person

- (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.*
- (4) An owner or mortgagee, as the case may be, may exercise his right to vote personally or by proxy.*

22 Section 23 presently reads:

23(1) A corporation shall have a board of managers that shall be constituted as provided by the by-laws of the corporation.

(2) A corporation shall, within 15 days of a person becoming or ceasing to be a member of the board, file at the land titles office a notice in the prescribed form stating the name and address of that person and the day that the person became or ceased to be, as the case may be, a member of the board.

(3) 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.

(4) All acts done in good faith by a board are, notwithstanding that it is afterwards discovered that there was some defect in the election

- (a) shall declare to the board that person's interest in the agreement, arrangement or transaction,
- (b) shall not vote in respect of any matter respecting that agreement, arrangement or transaction, and
- (c) shall not be counted when determining whether a quorum exists when a vote or other action is taken in respect of the agreement, arrangement or transaction.

(c) by repealing subsection (2) and substituting the following:

(2) A corporation shall, within 30 days from the conclusion of the corporation's annual general meeting, file at the land titles office a notice in the prescribed form stating the names and addresses of the members of the board.

(2.1) Notwithstanding subsection (2), a corporation may at any time following a change in

- (a) the membership of the board,
- (b) the name of a member of the board, or
- (c) the address of a member of the board,

file at the land titles office a notice in the prescribed form stating the change.

(d) in subsection (3) by adding "in a resolution passed" after "direction given";

(e) by adding the following after subsection (3):

(3.1) A person who

- (a) is a bona fide third party dealing at arm's length with the corporation, and
- (b) does not have notice of a restriction or direction referred to in subsection (3),

is not liable for or otherwise affected or bound by any breach of or failure to follow that restriction or direction by the corporation.

(f) by adding the following after subsection (4):

*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.*

(5) At least $\frac{2}{3}$ of the membership of the board of directors of the corporation shall be unit owners or mortgagees unless the by-laws provide otherwise.

23 The heading preceding section 24 is amended by striking out “Annual”.

24 Section 24 is amended

(a) by renumbering it as section 24(1);

(b) in subsection (1) by striking out “residential” wherever it occurs;

(c) by adding the following after subsection (1):

(2) Notwithstanding subsection (1), if the developer does not convene a meeting of the corporation under subsection (1) within the time periods prescribed by subsection (1), an owner may convene the meeting.

25 Section 25 is amended by adding the following after subsection (2):

(3) At the annual general meeting of the owners, the corporation shall distribute to the owners the financial statements for the corporation’s preceding fiscal year and an annual budget for the corporation’s fiscal year that immediately follows the corporation’s preceding fiscal year.

(4) The financial statements referred to in subsection (3) must be prepared in accordance with generally accepted accounting principles.

(5) Notwithstanding subsection (3), where the corporation has distributed the financial statements and budget referred to in subsection (3) to the owners within 30 days prior to the annual general meeting of the owners, the corporation is considered to have complied with subsection (3).

26 The following is added after section 25:

Venue of
meeting

25.1 Meetings of the board and general meetings of the corporation shall be held within the municipality in which the units are located unless a majority of the owners by means of an ordinary resolution passed at the corporation’s

23 The heading preceding section 24 presently reads:

Annual Meetings of the Corporation

24 Section 24 presently reads:

24 When a developer registers a condominium plan, he shall within

*(a) 90 days from the day that 50% 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
a board shall be elected.*

25 Section 25 presently reads:

*25(1) The board shall, once every year, convene an annual general
meeting of the owners.*

*(2) An annual general meeting of the owners shall be convened by
the board within 15 months of the conclusion of the immediately
preceding annual general meeting.*

26 Venue of meetings.

annual general meeting agree to hold the meetings in another location.

27 Section 26 is amended

(a) by adding the following after subsection (1):

(1.1) The owners of the units and anyone in possession of a unit are bound by the by-laws.

(b) by adding the following after subsection (5):

(6) If there is a conflict between the by-laws and this Act, this Act prevails.

28 Section 27 is amended by adding “, and those by-laws remain in force in respect of that corporation until they are repealed or replaced” after “in Appendix 1”.

29 Section 28 is amended by adding “by special resolution” after “repealed or replaced”.

27 Section 26 presently reads:

26(1) The by-laws shall regulate the corporation and provide for the control, management and administration of the units, the real and personal property of the corporation and the common property.

(2) Any by-law may be amended, repealed or replaced by a special resolution.

(3) An amendment, repeal or replacement of a by-law does not take effect until

(a) the corporation files a copy of it with the Registrar, and

(b) the Registrar has made a memorandum of the filing on the condominium plan.

(4) No by-law operates to prohibit or restrict the devolution of units or any transfer, lease, mortgage or other dealing with them or to destroy or modify any easement implied or created by this Act.

(5) The by-laws bind the corporation and the owners to the same extent as if the by-laws had been signed and sealed by the corporation and by each owner and contained covenants on the part of each owner with every other owner and with the corporation to observe and perform all the provisions of the by-laws.

28 Section 27 presently reads:

27 On the registration of a condominium plan the by-laws of the corporation are the by-laws set forth in Appendix 1.

29 Section 28 presently reads:

28 If

(a) a corporation existed on May 16, 1978, and

(b) that corporation was regulated by the by-laws set forth in Appendix 2, Schedules A and B as those by-laws existed on May 15, 1978,

that corporation shall continue to be regulated by those by-laws and for that purpose those by-laws remain in force in respect of that corporation until they are repealed or replaced.

30 *The following is added after section 28:*

Sanctions for
failure to
comply with
by-laws

28.1(1) The corporation may by by-law impose monetary or other sanctions on owners, tenants and invitees of the owners or tenants who fail to comply with the by-laws.

(2) A by-law under which sanctions are imposed must

- (a) set out the sanctions that may be imposed, and
- (b) in the case of monetary sanctions, set out the amount of the monetary sanctions or the range of monetary sanctions that may be imposed.

(3) A by-law under which sanctions may be imposed may be general or specific in its application.

(4) Where a person fails to abide by a sanction or to pay to the corporation a monetary sanction imposed under a by-law, the corporation may proceed under section 29 to enforce the sanction.

(5) A sanction may not be imposed that has the effect of prohibiting or restricting the devolution of units or any transfer, lease, mortgage or other dealing with the units or of destroying or modifying any easement implied or created by this Act.

31 *Section 29 is repealed and the following is substituted:*

Enforcement
of sanctions

29(1) If a person fails to comply with a sanction or to pay a monetary sanction imposed pursuant to a by-law, the corporation may, in respect of the contravention,

- (a) take proceedings under Part 4 of the *Provincial Court Act* to recover from the person damages of not more than \$4000, or
- (b) take proceedings in the Court of Queen's Bench to recover from the person damages of not more than \$10 000.

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

- (a) the by-laws relating to the matter before the court were properly enacted, and

30 Provides for imposing sanctions for person's failing to comply with the by-laws of a corporation.

31 Section 29 presently reads:

29(1) If an owner, tenant or other person residing in or on 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

(a) the by-law was properly enacted, and

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

(3) On hearing the matter, the provincial judge may

(a) give judgment against the defendant in the amount being sued for or any lesser amount as appears proper in the circumstances, or

(b) dismiss the action.

(b) the by-law for which the sanction was imposed was contravened by the defendant.

(3) On hearing the matter, the court may do one or more of the following:

- (a) give judgment against the defendant in the amount being sued for or any lesser amount as appears proper in the circumstances;
- (b) in the case of proceedings taken in the Court of Queen's Bench, grant injunctive or other relief that the Court considers appropriate in the circumstances;
- (c) dismiss the action;
- (d) make an award as to costs as appears appropriate in the circumstances.

(4) For the purposes of this section, once the court is satisfied that the requirements of subsection (2) have been met, damages are deemed to have been suffered by the corporation.

(5) Where a corporation takes proceedings under this section, it is entitled to claim from the defendant the corporation's legal expenses incurred in respect of the proceedings.

(6) For the purposes of subsection (2)(a), a copy of a by-law that is certified by the Registrar as being a true copy of the by-law filed at the land titles office is prima facie proof

(a) of the contents of the by-law, and

(b) that the by-law was properly enacted.

(7) An action taken against a person under this section does not restrict, limit or derogate from any other remedy that an owner or the corporation may have against that person.

32 *The following is added after section 30:*

Reserve fund

30.1(1) A corporation shall, subject to the regulations, establish and maintain a capital replacement reserve fund to be used to provide sufficient funds that can reasonably be expected to provide for major repairs and replacement of

and make an award as to costs as appears proper in the circumstances.

(4) A corporation may not commence an action under this section unless it is authorized by by-law to do so.

(5) For the purposes of subsection (2)(a), a copy of a by-law that is certified by the Registrar as being a true copy of the by-law filed at the land titles office is prima facie proof

(a) of the contents of the by-law, and

(b) that the by-law was properly enacted.

(6) The commencement of an action against a person under this section does not restrict, limit or derogate from a remedy that an owner or the corporation may have against that person.

32 Establishment and maintenance of a capital replacement reserve fund.

- (a) any real and personal property owned by the corporation, and
- (b) the common property,

where the repair or replacement is of a nature that does not normally occur annually.

(2) Notwithstanding subsection (1), funds shall not be taken from a capital replacement reserve fund for the purposes of making capital improvements.

(3) The money in the capital replacement reserve fund of the corporation is an asset of the corporation and no part of that money shall be refunded or distributed to any owner of a unit except where the owners and the property cease to be governed by this Act.

33 *Section 31 is amended*

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

- (c) to raise amounts so determined by levying contributions on the owners
 - (i) in proportion to the unit factors of the owners' respective units, or
 - (ii) if provided for in the by-laws, on a basis other than in proportion to the unit factors of the owners' respective units;

(b) *by adding the following after subsection (2):*

(2.1) Where a contribution is levied under subsection (1) and is not paid by the owner, the mortgagee may pay any amount owing in respect of that contribution and add that amount to the amount owing to the mortgagee under the mortgage.

(2.2) Where

- (a) a person other than the owner is in possession of a unit and pays rent to the owner in respect of the unit, and
- (b) the monthly contributions payable in respect of that unit are in arrears,

33 Section 31 presently reads:

31(1) In addition to its other powers under this Act, the powers of a corporation include the following:

- (a) to establish a fund for administrative expenses sufficient, in the opinion of the corporation, for the control, management and administration of the common property, for the payment of any premiums of insurance and for the discharge of any other obligation of the corporation;*
- (b) to determine from time to time the amounts to be raised for the purposes mentioned in clause (a);*
- (c) to raise amounts so determined by levying contributions on the owners in proportion to the unit factors for their respective units;*
- (d) to recover from an owner by an action in debt any sum of money spent by the corporation*
 - (i) pursuant to a by-law, or*
 - (ii) as required by a local authority or other public authority,*

in respect of the unit or common property that is leased to that owner under section 41.

(2) A contribution levied as provided in subsection (1) is due and payable on the passing of a resolution to that effect and in accordance with the terms of the resolution, and may be recovered by an action for debt by the corporation

the corporation may require the person in possession of the unit to pay the rent owing to the owner in respect of that unit to the corporation for the purposes of applying that rent against the monthly contributions that are in arrears.

(2.3) Where a person in possession of a unit other than the owner pays the rent to the corporation under subsection (2.2), that person is deemed to have paid that rent to the owner.

(c) *in subsection (3) by striking out “or a person authorized in writing by him” and substituting “, purchaser or mortgagee or the solicitor of an owner, purchaser or mortgagee, or a person authorized in writing by any of those persons”;*

(d) *by adding the following after subsection (8):*

(9) Notwithstanding subsection (6), if

- (a) a corporation has filed a caveat under this section,
- (b) subsequent to the caveat's being filed another person gains title to the unit pursuant to a foreclosure action or an action for specific performance, and
- (c) an amount remains owing to the corporation with respect to the contribution for which the caveat was filed,

that caveat shall remain registered against the certificate of title of the unit until the amount owing is paid to the corporation.

34 *Section 32 is amended by striking out “, if permitted to do so by by-law,”.*

35 *Section 34 is repealed and the following is substituted:*

Recovery of
costs

34 Where a corporation takes proceedings to collect any amount owing under section 31, the corporation may

(a) *from the person who was the owner at the time when the resolution was passed, and*

(b) *from the person who was the owner at the time when the action was instituted,*

both jointly and severally.

(3) *A corporation shall, on the application of an owner or a person authorized in writing by him, certify*

(a) *the amount of any contribution determined as the contribution of the owner,*

(b) *the manner in which the contribution is payable,*

(c) *the extent to which the contribution has been paid by the owner, and*

(d) *the interest owing, if any, on any unpaid balance of a contribution*

and, in favour of a person dealing with that owner the certificate is conclusive proof of the matters certified in it.

(4) *A corporation may file a caveat against the certificate of title to an owner's unit for the amount of a contribution levied on the owner but unpaid by him.*

(5) *On the filing of the caveat under subsection (4) the corporation has a charge against the unit equal to the unpaid contribution.*

(6) *A charge under subsection (5) has the same priority from the date of filing of the caveat as a mortgage under the Land Titles Act and may be enforced in the same manner as a mortgage.*

(7) *The Dower Act and Part 10 of the Civil Enforcement Act do not apply to proceedings under subsection (6).*

(8) *If a corporation has filed a caveat under this section, the corporation on the payment to it of the amount of the charge shall withdraw the caveat.*

34 Section 32 presently reads:

32 The corporation may, if permitted to do so by by-law, charge interest on any unpaid balance of a contribution owing to it by an owner.

35 Section 34 presently reads:

34 If a corporation registers a caveat against the title to a unit under section 31, it may recover from the owner of the unit the cost

- (a) recover from the person against whom the proceedings were taken all reasonable costs, including legal expenses and interest, incurred by the corporation in collecting the amount owing, and
- (b) if a caveat is registered against the title to the unit, recover from the owner all reasonable expenses incurred by the corporation with respect to the preparation, registration, enforcement and discharge of the caveat.

36 *Section 35 is amended by renumbering it as section 35(1) and by adding the following after subsection (1):*

(2) Every person in receipt of money paid to or for the benefit of the corporation shall

- (a) be deemed to hold the money and all the proceeds arising from that money in trust for the performance of the duties and obligations in respect of which the payment was made,
- (b) except as otherwise authorized in writing pursuant to a resolution of the board,
 - (i) pay all the money into a separate account at a chartered bank, trust company, credit union or treasury branch within 2 banking days of receiving the money, and
 - (ii) designate the account as a trust account registered in the name of the corporation,
- (c) keep all trust money intact and not withdraw, convert, direct, borrow or commingle that trust money, other than pursuant to a resolution referred to in clause (b), and
- (d) where any amounts are in excess of the amounts currently required to meet the duties and obligations of the corporation, invest those excess amounts in any investment in which a trustee may invest under the *Trustee Act*.

37 *Section 36 is amended*

- (a) *by striking out “20 days” and substituting “10 days”;*
- (b) *by adding the following after clause (d):*

incurred in preparing and registering the caveat and in discharging the caveat.

36 Section 35 presently reads:

35 Subject to section 30(3), a corporation may invest any funds not immediately required by it only in those investments in which a trustee may invest under the Trustee Act.

37 Section 36 presently reads:

36 On the written request of an owner, purchaser or mortgagee of a unit the corporation shall, within 20 days of receiving that request,

(d.1) the particulars of any post tension cables that are located anywhere on or within the property that is included in the condominium plan;

(c) in clause (e) by striking out “, if any.”;

(d) in clause (f) by striking out “financial statement, if any,” and substituting “most recent financial statements”;

(e) by adding the following after clause (h):

(i) the amount of the reserve fund;

(j) the amount of the monthly contributions payable in respect of the unit;

(k) the unit factors and the criteria used to determine unit factor allocation;

(l) any structural deficiencies in the condominium complex;

(m) any lease agreement or exclusive use agreement with respect to the possession of a portion of the common property, including a parking stall or storage unit.

38 The following is added after section 36:

Inspection of
records by
mortgagee

36.1 On 10 days’ written notice to a corporation, a mortgagee may inspect one or more of the following:

(a) the records of the corporation;

(b) the minutes of meetings of the board of directors of the corporation;

(c) the minutes of any general or similar meeting of the owners.

39 Section 38 is amended

(a) in subsection (1)(a), (a.1) and (b) by striking out “fire and those other perils specified in the by-laws” wherever it occurs and substituting “any peril except those excluded by regulation”;

provide to the person making the request one or more of the following as requested by that person:

- (a) a statement setting forth the amount of any contributions due and payable in respect of a unit;*
- (b) the particulars of*
 - (i) any action commenced against the corporation and served on the corporation,*
 - (ii) any unsatisfied judgment or order for which the corporation is liable, and*
 - (iii) any written demand made on the corporation for an amount in excess of \$5000 that, if not met, may result in an action being brought against the corporation;*
- (c) the particulars of or a copy of any subsisting management agreement;*
- (d) the particulars of or a copy of any subsisting recreational agreement;*
- (e) a copy of the budget, if any, of the corporation;*
- (f) a copy of the financial statement, if any, of the corporation;*
- (g) a copy of the by-laws of the corporation;*
- (h) a copy of any minutes of proceedings of a general meeting of the corporation or of the board.*

38 Inspection of records by mortgagee.

39 Section 38(1) presently reads:

38(1) A corporation

- (a) where a building is divided into units, shall place and maintain insurance on the units, other than improvements made to the units by the owners, and the*

(b) by adding the following after subsection (5):

(6) A corporation shall place and maintain insurance in respect of the members of the board and any officers of the corporation against liabilities, costs, charges and expenses of the directors and officers incurred except as a result of a failure to comply with section 23(1.1).

40 Section 39 is repealed and the following is substituted:

Copies of
insurance
policies

39(1) On a written request of an owner, purchaser or mortgagee of a unit

(a) for a copy of a policy of insurance placed by the corporation, the corporation shall provide a copy of the policy to the person making the request within 30 days from the day of receiving that request, or

(b) for an insurance certificate, the corporation shall provide the insurance certificate to the person making the request within 10 days from the day of receiving that request.

(2) A corporation may charge a reasonable cost for providing a copy of an insurance policy under subsection (1)(a).

41 Section 41 is repealed and the following is substituted:

Exclusive use
areas

41(1) Notwithstanding section 40, a corporation may grant a lease to an owner of a unit permitting that owner to exercise exclusive possession in respect of an area or areas of the common property.

(2) Where the corporation grants a lease permitting an owner to exercise exclusive possession in respect of an area or areas of the common property, the corporation may delegate its responsibility to care for and maintain that area or those areas to that owner.

common property against loss resulting from destruction or damage caused by fire and those other perils specified in the by-laws,

- (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,*
- (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.

40 Section 39 presently reads:

39 On a written request of an owner, purchaser or mortgagee of a unit the corporation shall, within 20 days of receiving that request, provide to the person making the request copies of the policies of insurance placed by the corporation.

41 Section 41 presently reads:

41 Notwithstanding section 40, a corporation may, if its by-laws permit it to do so, grant a lease to an owner of a residential unit permitting that owner to exercise exclusive possession in respect of an area or areas of the common property.

42 *Section 43 is amended*

(a) *in subsection (1) by striking out “unanimous” and substituting “special”;*

(b) *by adding the following after subsection (1):*

(1.1) By a special resolution a corporation may be directed to execute on behalf of the owners a surrender of an easement or a restrictive covenant that was granted under subsection (1).

(c) *in subsections (2) and (4) by striking out “unanimous” wherever it occurs and substituting “special”.*

43 *The heading preceding section 44 is amended by striking out “Residential”.*

44 *Section 44 is amended*

(a) *in subsection (1) by striking out “residential”;*

(b) *in subsection (2)*

(i) *by striking out “residential”;*

(ii) *by striking out “persons residing in or on” and substituting “person renting the unit and any invitees of that person who are in or on”;*

(c) *in subsection (3)*

(i) *by striking out “residential”;*

(ii) *by striking out “a person residing in or on the rented unit” and substituting “the person renting the unit or any invitees of that person”;*

42 Section 43 presently reads in part:

43(1) By a unanimous resolution a corporation may be directed to execute on behalf of the owners a grant of easement or a restrictive covenant burdening the parcel.

(2) When the board is satisfied that the unanimous resolution was properly passed and that

(a) all persons having interests in the parcel, and

(b) all other persons having interests, other than statutory interests, that have been notified to the corporation,

have consented in writing to the release of those interests in respect of the land comprised in the proposed disposition, the corporation shall execute the appropriate instrument to grant the easement or covenant.

(4) The Registrar shall not register an instrument granting an easement or covenant authorized under this section unless it has endorsed on it or is accompanied by a certificate under the seal of the corporation stating that the unanimous resolution was properly passed and that all necessary consents were given.

43 The heading preceding section 44 presently reads:

Rental of Residential Units

44 Section 44 presently reads:

44(1) An owner of a residential unit shall not rent his unit until he has given written notice to the corporation of his intention to rent the unit, setting forth

(a) the address at which he may be served with a notice given by the corporation under section 45 or an originating notice or order referred to in section 46 or 47, and

(b) the amount of rent to be charged for the unit.

(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 or on 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.

(d) in subsection (5)

(i) by striking out “residential”;

*(ii) by striking out “residing in or on” and substituting
“renting”;*

(e) in subsection (6) by striking out “residential”.

45 Section 45 is amended

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

(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 or on the rented unit.

(4) A deposit referred to in subsection (3) shall not exceed one month's rent charged for the unit.

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

(6) Within 20 days of ceasing to rent his residential unit, the owner shall give the corporation written notice that his unit is no longer rented.

(7) A corporation shall, within 20 days of receiving a written notice under subsection (6),

(a) return the deposit to the owner,

(b) if the corporation has made use of the deposit for one or more of the purposes referred to under subsection (3), deliver to the owner

(i) a statement of account showing the amount used, and

(ii) the balance of the deposit not used, if any.

or

(c) if the corporation is entitled to make use of the deposit but is unable to determine the amount of the deposit that it will use, deliver to the owner an estimated statement of account showing the amount it intends to use and, within 60 days after delivering to the owner the estimated statement of account, deliver to the owner

(i) a final statement of account showing the amounts used, and

(ii) the balance of the deposit not used, if any.

45 Section 45 presently reads:

Notice to give
up possession

45(1) The corporation may give a tenant renting a unit a notice to give up possession of that unit, if the person renting the unit or any invitees of that person who are in or on the unit

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

(b) contravene a by-law.

(b) in subsection (2)(a) by striking out “residential”.

46 Section 47 is amended

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

Application for
order to give
up possession

47(1) If a person renting a unit or an invitee of the person renting the unit

(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 the owners of or persons who are renting, or who are invitees of the owners of or persons who are renting, the other units located on the parcel,

the corporation may, notwithstanding that the tenant renting that unit has or has not been given a notice to give up possession of that 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 unit.

(b) in subsection (3)(a)(ii) by striking out “residing in or on the other residential” and substituting “who are owners of or are renting, or who are invitees of owners of or of persons renting, the other”;

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 or on 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.

(2) When the corporation gives a tenant a notice under subsection (1),

(a) the tenant shall give up possession of the residential unit, and

(b) notwithstanding the Residential Tenancies Act or anything contained in the tenancy agreement between the tenant and his landlord, the tenancy agreement terminates,

on the last day of the month immediately following the month in which the notice is served on the tenant.

(3) A notice given under subsection (1) shall be served on the tenant and his landlord.

46 Section 47 presently reads:

47(1) If a person residing in or on 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 or on 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.

(2) An originating notice under this section shall be served on the tenant and his landlord not less than 3 days, exclusive of holidays and Saturdays, 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) setting forth

(c) *in subsection (4) by striking out clause (a) and substituting the following:*

- (a) requiring the tenant to give up possession of the unit if the Court is satisfied that
 - (i) a person who is renting or is an invitee of the person renting that 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 the owners of or persons who are renting, or who are invitees of the owners of or persons who are renting, 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,

47 *The following is added after section 47:*

Residential
Tenancies Act

47.1 Where a conflict arises between the operation of sections 44 to 47 of this Act and the provisions of the *Residential Tenancies Act*, sections 44 to 47 of this Act prevail.

48 *Section 48 is repealed.*

- (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 or on 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 or on 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 or on 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.*
- (5) *The tenancy agreement between the tenant and the landlord terminates on the day that the tenant is required to give up possession of the unit pursuant to an order made under subsection (4).*
- (6) *The corporation shall serve a copy of an order made under subsection (4) on the landlord.*

47 Relationship between the Condominium Property Act and the Residential Tenancies Act.

48 Section 48 presently reads:

- 48(1) A corporation shall not*
- (a) impose or collect deposits under section 44.*

49 Section 53 is amended by adding the following after subsection (2):

(3) On the filing of a notice of the termination with the Registrar

- (a) the corporation ceases to exist, and
- (b) subject to any declaration of the Court made under section 52, any funds of the corporation that are left after the payment of the corporation's debts and liabilities shall be distributed to the owners of the units in the plan in shares proportional to the unit factors of the owners' respective units.

50 Section 59 is amended by striking out "an assessing authority" and substituting "the Crown, a local authority as defined in the *Municipal Government Act* or any other authority that has the power to assess and levy rates, charges or taxes on land or in respect of the ownership of land".

51 The following is added after section 60:

Court ordered
remedy

60.1(1) In this section,

- (a) "improper conduct" means
 - (i) non-compliance with this Act, the regulations or the by-laws by a developer, a corporation, an employee of a corporation, a member of a board or an owner,
 - (ii) the conduct of the business affairs of a corporation in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of an interested party,
 - (iii) the exercise of the powers of the board in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of an interested party,

(b) give notices to give up possession of residential units under section 45, or

(c) make applications to the Court under section 46 or 47,

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

(2) A by-law referred to in subsection (1) may be general or specific in its application.

49 Section 53 presently reads:

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

(2) On receipt of the notice referred to in subsection (1), the Registrar shall make a notification in respect of the notice on the condominium plan in the manner prescribed by the regulations and on the notification being made, the owners of the units in the plan are entitled to the parcel as tenants in common in shares proportional to the unit factors of their respective units.

50 Section 59 presently reads:

59 The corporation is not liable in relation to a unit and the share in the common property assigned to the unit for any rate, charge or tax levied by an assessing authority.

51 Court ordered remedies respecting improper actions.

- (iv) the conduct of the business affairs of a developer in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of an interested party or a purchaser or a prospective purchaser of a unit, or
 - (v) the exercise of the powers of the board by a developer in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of an interested party or a purchaser or a prospective purchaser of a unit;
 - (b) “interested party” means an owner, a corporation, a member of the board, a registered mortgagee or any other person who has a registered interest in a unit.
- (2) Where on an application by an interested party by means of an originating notice the Court is satisfied that improper conduct has taken place, the Court may do one or more of the following:
- (a) direct that an investigator be appointed to review the improper conduct and report to the Court;
 - (b) direct that the person carrying on the improper conduct cease carrying on the improper conduct;
 - (c) give directions as to how matters are to be carried out so that the improper conduct will not reoccur or continue;
 - (d) if the applicant suffered loss due to the improper conduct, award compensation to the applicant in respect of that loss;
 - (e) award costs;
 - (f) give any other directions or make any other order that the Court considers appropriate in the circumstances.
- (3) The Court may grant interim relief under subsection (2) pending the final determination of the matter by the Court.

52 *The following is added after section 61:*

Alternate
dispute
resolution

61.1(1) Any dispute respecting any matter arising under this Act or in respect of the by-laws of a corporation may, with the agreement of the parties to the dispute,

52 Provides for the handling of disputes by means of an alternate dispute resolution mechanism.

- (a) be dealt with by means of mediation, conciliation or similar techniques to encourage settlement of the dispute, or
- (b) be arbitrated under the *Arbitration Act*.

(2) Nothing in subsection (1) shall be construed so as to prohibit a dispute from being arbitrated subsequent to an unsuccessful attempt to deal with the dispute by means of mediation, conciliation or a similar technique.

53 Section 70 is amended by renumbering it as section 70(1) and by adding the following after subsection (1):

(2) Where

- (a) a lien referred to in subsection (1)(b) arises, and
- (b) a statement of lien is registered against the condominium plan,

that statement of lien, on being registered against the condominium plan,

- (c) is deemed to be also registered against the certificate of title for each unit, and
- (d) may be enforced against the common property and each unit in the same manner as if the statement of lien were specifically registered against the estate of each owner and that owner's share in the common property.

(3) Where

- (a) a lien referred to in subsection (1)(b) is registered with the Registrar, and
- (b) payment is made to the holder of the lien in an amount that is sufficient to discharge the proportion of the liability that relates to the owner's unit and the owner's share in the common property,

the holder of the lien shall, on the demand of the owner, provide to the owner a discharge of the lien as it pertains to the owner's unit and the owner's share in the common property.

(4) A discharge of a lien that is provided under subsection (3) may be entered on the condominium plan.

53 Section 70 presently reads:

70 For the purposes of the Builders' Lien Act,

(a) if on the request of the owner of a unit

(i) work is done in or on or in respect of that unit, or

(ii) material is furnished to be used in or on that unit,

any lien that arises under that Act in consequence of it is on the estate of the owner in that unit and his share in the common property;

(b) if on the request of a corporation

(i) work is done in or on or in respect of the common property or a unit or both, or

(ii) material is furnished to be used in or on the common property or a unit or both

intended for the benefit of the common property generally, any lien that arises under that Act in consequence of it is on the estates of all the owners in all the units and the common property;

(c) if on the request of a corporation

(i) work is done in or on or in respect of any unit, or

(ii) material is furnished to be used in or on any unit,

intended for the benefit of that unit, any lien that arises under that Act in consequence of it is on the estate of the owner in that unit and his share in the common property.

54 Section 71 is amended

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

Offences and
penalties

71(1) A person who fails to comply with section 9(1) or (5), 10, 11 or 16 is guilty of an offence and liable to a fine

(a) of not less than \$200 nor more than \$15 000 in the case of a person who is not a company, and

(b) of not less than \$500 nor more than \$25 000 in the case of a company.

(b) in subsection (2) by striking out “more than \$500” and substituting “less than \$200 nor more than \$5000”;

(c) in subsection (3) by striking out “more than \$500” and substituting “less than \$200 nor more than \$5000”.

55 Section 73 is amended

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

(b.1) for the purposes of section 6, prescribing any other information or feature that must be contained in a condominium plan;

(b.2) governing the modification of a condominium plan under section 15(1.1);

(b.3) for the purposes of section 38, excluding one or more perils from the requirement to place and maintain insurance against loss resulting from those perils;

(b.4) subject to sections 51 to 54, governing the termination of condominium status of real property;

(b.5) subject to section 55, governing the dissolution and winding-up of a corporation;

(b.6) governing the development in phases of units and common property under a condominium plan;

(b.7) governing the cancellation or the non-completion of a development in phases of units and common property under a condominium plan;

(b.8) governing the requirements to be met by developers;

54 Section 71 presently reads:

71(1) A person who fails to comply with section 9(1) or (5), 10 or 16 is guilty of an offence and liable to a fine of not more than \$2000.

(2) Subject to subsection (1), a person who fails to comply with this Act is guilty of an offence and liable to a fine of not more than \$500.

(3) If a corporation fails to comply with this Act, each member of the board who is knowingly a party to that failure is guilty of an offence and liable to a fine of not more than \$500.

55 Section 73 presently reads:

73 The Lieutenant Governor in Council may make regulations

(a) in respect of forms to be used for the purposes of this Act, including the form of certificates of title to units;

(b) respecting the manner of registering a condominium plan;

(c) prescribing the fees to be paid for any procedure or function required or permitted to be done under this Act;

(d) respecting the practice and procedure governing application to the Court under this Act;

(e) concerning all matters that by this Act are required or permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(b.9) governing capital replacement reserve funds maintained by corporations;

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

(d.1) authorizing an association or organization that in the opinion of the Minister represents the interests of owners, corporations, developers, managers of corporations and persons other than owners who have interests in units

(i) to establish and enforce standards of conduct for corporations, managers and developers with respect to matters that come under this Act;

(ii) to provide for the mediation, conciliation, arbitration or similar techniques to encourage settlement of disputes arising in respect of units, common property, management of units, common property or corporations, the sale or rental of units or any other matter coming under this Act;

(iii) to carry out functions or duties under this Act that are delegated to the association or organization by the Minister;

(d.2) authorizing the Minister to delegate to an association or organization referred to in clause (d.1) the carrying out of any function or duty under this Act;

56 Appendix 1 is amended

(a) in section 27 by striking out “or unanimous resolution”;

(b) by repealing section 30 and substituting the following:

30 Except as provided for in the Act, there are no restrictions or limitations on an owner’s rights to vote at an annual general meeting or a general meeting.

(c) by repealing the heading preceding section 33 and section 33;

(d) in section 35(b) by striking out “residential”.

56 Sections 27, 30, 33 and 35 of Appendix 1 presently read:

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

30(1) Except as provided for in subsection (2) of this section or section 21 of the Act, there are no restrictions or limitations on an owner's rights to vote at an annual general meeting or a general meeting.

(2) If, at the time of an annual general meeting or 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 in respect of any resolution other than a special resolution or a unanimous resolution.

(3) An owner's ineligibility to cast a vote does not affect 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 Act.

57 *Appendix 2, Schedule A is amended by repealing section 27 and substituting the following:*

27 Except as provided for in the *Condominium Property Act*, there are no restrictions or limitations on an owner's rights to vote at an annual general meeting or a general meeting.

58 *The following provisions are amended by striking out "residential" wherever it occurs:*

section 46(1) and (4);
section 72(2).

59 *The following provisions are amended by striking out "unanimous" wherever it occurs and substituting "special":*

section 22(2);
section 40(1), (2) and (4);
section 42;
section 51;
section 54(1), (2) and (4);
sections 3(f), 28 and 29 of Appendix 2, Schedule A.

Capital Replacement Reserve Fund

33(1) The board shall establish and maintain a fund called a "Capital Replacement Reserve Fund" to be used for the repair or replacement of

(a) any real and personal property owned by the corporation, and

(b) the common property,

when the repair or replacement does not occur annually.

(2) The board may by resolution determine the minimum amount that may be paid from the Capital Replacement Reserve Fund in respect of a single expenditure.

35 The corporation is authorized to

(a) impose and collect deposits under section 44 of the Act,

(b) give notices to give up possession of residential units under section 45 of the Act, and

(c) make applications to the Court under sections 46 and 47 of the Act.

57 Section 27 of Appendix 2, Schedule 1 presently reads:

27 Except in cases where by the Condominium Property Act a unanimous resolution is required, no owner is entitled to vote at any general meeting unless all contributions payable in respect of his unit have been paid.

58 Deletes the reference to "residential".

59 Changes the reference from "unanimous resolution" to "special resolution".

60 *The following provisions are amended by striking out “local authority” wherever it occurs and substituting “municipal authority”:*

section 30(2)(b);
section 31(d)(ii);
section 37(1)(e);
section 62;
section 2(b)(i) of Appendix 1.

61(1) *In this section,*

(a) *“amended Act” means the Condominium Property Act as amended by this Act;*

(b) *“previous Act” means the Condominium Property Act as it read immediately before it was amended by this Act.*

(2) *If an action is commenced under section 29 of the previous Act and is not concluded before the coming into force of section 31 of this Act, the previous Act continues to apply to that action as if section 31 of this Act had not come into force.*

(3) *Where*

(a) *under the amended Act a special resolution is required in respect of a matter for which a unanimous resolution was required under the previous Act, and*

(b) *a corporation wishes to continue to require a unanimous resolution under the amended Act in respect of a matter for which a unanimous resolution was required under the previous Act,*

the corporation may before January 1, 1998 enact by special resolution a by-law requiring that a unanimous resolution continue to be required under the amended Act in respect of that matter.

(4) *Until a by-law is enacted under subsection (3) the amended Act applies and a matter that under the previous Act required a unanimous resolution may be dealt with by means of a special resolution.*

62 *This Act comes into force on Proclamation.*

60 Changes the reference from “local authority” to “municipal authority”.

61 Transitional.

62 Coming into force.