

2014 Bill 13

Second Session, 28th Legislature, 63 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 13

CONDOMINIUM PROPERTY AMENDMENT ACT, 2014

MS. OLESEN

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 13
Ms. Olesen

BILL 13

2014

CONDOMINIUM PROPERTY AMENDMENT ACT, 2014

(Assented to , 2014)

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

Amends RSA 2000 cC-22

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

2 Section 1(1) is amended

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

(g.1) “contribution” means an amount levied under section 39;

(g.2) “conversion” means a condominium plan in which is illustrated an existing building that, at any time before the registration of the condominium plan, was occupied in whole or in part by any person, including a tenant, other than

(i) a purchaser of a unit to be created by the registration of the condominium plan, or

(ii) a person occupying the building or any part of it for the sole purpose of marketing the units to be created by the registration of the condominium plan;

(g.3) “conversion unit” means a unit in a conversion;

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

Explanatory Notes

1 Amends chapter C-22 of the Revised Statutes of Alberta 2000.

2 Add definitions; section 1(1)(n), (r) and (x) presently read:

1(1) In this Act,

(n) *“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, and*

(ii) *the common property;*

(r) *“ordinary resolution” means a resolution*

(i) *passed at a properly convened meeting of a corporation by a majority of all the persons present or represented by proxy at the meeting entitled to exercise the powers of voting conferred by this Act or the bylaws, or*

(ii) *signed by a majority 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*

(j.1) “Director” means an individual designated by the Minister as a Director for the purposes of this Act and the regulations;

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

(k.1) “general meeting” means an annual general meeting referred to in section 30 and a special general meeting referred to in section 30.1;

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

(m.1) “managed property” means any property that a corporation is required by bylaw to maintain, repair or replace, other than the real and personal property of the corporation and the common property;

(e) by repealing clause (n)(i) and (ii) and substituting the following:

- (i) the real and personal property of the corporation,
- (ii) the common property, and
- (iii) managed property;

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

- (r) “ordinary resolution” means a resolution
 - (i) passed at a properly convened general meeting of a corporation by a majority of the votes cast by persons voting in accordance with section 26, or
 - (ii) signed by a majority of persons who, at a properly convened general meeting of a corporation, would be entitled to vote in accordance with section 26 and whose votes represent more than 50% of the total unit factors for all the units;

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

(t.1) “prescribed” means prescribed or otherwise provided for in the regulations;

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

bylaws and representing more than 50% of the total unit factors for all the units;

(x) *“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 bylaws and representing not less than 75% of the total unit factors for all the units, or*
- (ii) agreed to in writing 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 bylaws and representing not less than 75% of the total unit factors for all the units;*

- (u.1) “recorded mail” means a form of document delivery by mail or courier in which receipt of the document must be acknowledged in writing;

(i) by repealing clause (x) and substituting the following:

- (x) “special resolution” means a resolution
 - (i) passed at a properly convened general meeting of a corporation by not less than 75% of all the persons entitled to vote in accordance with section 26 and whose votes represent not less than 75% of the total unit factors for all the units, or
 - (ii) agreed to in writing by not less than 75% of all the persons who, at a properly convened general meeting of a corporation, would be entitled to vote in accordance with section 26 and whose votes represent not less than 75% of the total unit factors for all the units;

(j) by adding the following after clause (x):

- (x.1) “Tribunal” means the Tribunal established in accordance with the regulations under section 69.9;

3 Section 8(1) is amended by adding the following after clause (l):

- (l.1) delineate, illustrate and label visitor and handicapped parking spaces
 - (i) on common property where the condominium plan is not a plan of redivision, or
 - (ii) on a unit where the condominium plan is a plan of redivision;

4 Section 10(1)(b) is repealed and the following is substituted:

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

3 Section 8(1) presently reads in part:

8(1) Every plan presented for registration as a condominium plan shall

4 Section 10 presently reads:

10(1) Every plan presented for registration as a condominium plan shall be endorsed with or accompanied with

(a) a certificate of a land surveyor stating

- (i) a certificate of an architect, an engineer or a land surveyor stating, with respect to that building,
 - (A) that the units shown in the plan are the same as those existing, and
 - (B) whether there are any post tensioned cables located anywhere on or within that building or the property on which that building is located,

and

- (ii) a certificate of the municipal authority or of a person designated by the municipal authority stating that
 - (A) the proposed division of the building, as illustrated in the plan, has been approved by the municipal authority,
 - (B) the number of visitor and handicapped parking spaces illustrated in the plan meets the requirements of the municipal authority, and
 - (C) the visitor and handicapped parking spaces illustrated in the plan are located on common property or a unit labelled as visitor or handicapped parking in accordance with section 8(1)(1.1).

5 The heading preceding section 11 is repealed and the following is substituted:

- (i) *that the boundaries of the parcel have been established or re-established in accordance with the Surveys Act,*
- (ii) *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*
- (iii) *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 any projections 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 an architect, an engineer or a land surveyor stating, with respect to that building,*
 - (A) *that the units shown in the plan are the same as those existing, and*
 - (B) *whether there are any post tensioned cables located anywhere on or within that building or the property on which that building is located,*

and

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

5 The heading preceding section 11 presently reads:

Sale of Units by Developers

Duties of a Developer

Developer's control of corporation

10.1(1) A developer shall exercise the powers and perform the duties of a board from the time the condominium plan is registered until a board is elected pursuant to section 29.

(2) In exercising the powers and performing the duties of a board under subsection (1), a developer need not comply with bylaw requirements respecting the constitution of the board or the holding of board meetings.

Developer's standard of care

10.2(1) In exercising the powers and performing the duties of a board, a developer shall

- (a) act honestly and in good faith with a view to the best interests of the corporation, and
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(2) Without limiting subsection (1), a developer shall make reasonable efforts to pursue any remedies under warranties respecting the property of the corporation, the common property and managed property.

6 Sections 12 and 13 are repealed and the following is substituted:

Sale of units by developers

12(1) A developer shall not sell or agree to sell a unit or a proposed unit unless the developer has delivered to the purchaser a copy of

- (a) the purchase agreement;
- (b) the condominium plan or proposed condominium plan;
- (c) the bylaws or proposed bylaws;
- (d) any management agreement or proposed management agreement;

6 Sections 12 and 13 presently read:

12(1) A developer shall not sell or agree to sell a unit or a proposed unit unless the developer has delivered to the purchaser a copy of

- (a) the purchase agreement,*
- (b) the bylaws or proposed bylaws,*
- (c) any management agreement or proposed management agreement,*
- (d) any recreational agreement or proposed recreational agreement,*

- (e) any recreational agreement or proposed recreational agreement;
- (f) any other agreement or proposed agreement to which the condominium corporation is or will be a party, as the case may be,
 - (i) that binds the corporation for a term that is greater than 3 years, or
 - (ii) to which the developer or a person who is not at arm's length from the developer also is or will be a party;
- (g) the lease of the parcel if the parcel on which the unit is located, or the proposed unit will be 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 5(1)(b);
- (h) in respect of a mortgage that affects, or a proposed mortgage that will affect, the title to the unit or proposed unit,
 - (i) a copy of the mortgage or proposed mortgage, or
 - (ii) where the purchaser is to assume the mortgage or proposed mortgage, a statement containing the information referred to in subsection (2);
- (i) any mortgage or financial encumbrance registered against real property owned or to be owned by the corporation;
- (j) any home warranty insurance contract under the *New Home Buyer Protection Act* under which the corporation is or will be named as the insured;
- (k) if the unit is a conversion unit,
 - (i) the building assessment report under section 21.1 or under the *New Home Buyer Protection Act*, as the case may be, and
 - (ii) the reserve fund report required by the regulations;

- (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 5(1)(b),*
 - (f) *any mortgage that affects or proposed mortgage that will affect the title to the unit or proposed 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*
 - (f) *the prepayment privileges, if any.*
- (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.*
- (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 the developer's 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.*

- (l) the budget or proposed budget for the corporation for the year in which the purchaser's occupancy date for the unit falls, prepared in accordance with the regulations;
 - (m) any other information or documents prescribed by the regulations.
- (2) The statement to be provided under subsection (1)(h)(ii) must contain the following information:
- (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;
 - (f) the prepayment privileges, if any.
- (3) A developer shall provide to a purchaser of a unit or proposed unit prior to or at the time that the purchaser takes possession of the unit or proposed unit an occupancy permit or permission in writing to occupy the unit or proposed unit that is issued or given pursuant to the regulations under the *Safety Codes Act*.

Requirements of purchase agreement

12.1 A developer who enters into a purchase agreement shall include in the purchase agreement the following:

- (a) a notification in the prescribed form stating as follows:

“The purchaser may, without incurring any liability for doing so, rescind this agreement within 10 days after all of the information and documents required to be delivered to the purchaser under section 12 of the *Condominium Property Act* have been delivered to the purchaser.”;

(6) A developer shall provide to a purchaser of a unit prior to or at the time that the purchaser takes possession of the unit or proposed unit an occupancy permit or permission in writing to occupy the unit or proposed unit that is issued or given pursuant to the regulations under the Safety Codes Act.

13 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 on the outside front cover or on the first page of the purchase agreement in bold face, in upper case and in larger print than the rest of the purchase agreement stating as follows:

“The purchaser may, without incurring any liability for doing so, rescind this agreement within 10 days after its execution by the parties to it unless all of the documents required to be delivered to the purchaser under section 12 of the Condominium Property Act have been delivered to the purchaser not less than 10 days prior to the execution of this agreement by the parties to it.”;

(b) where the units and the common property are not substantially completed at the time that the purchase agreement is entered into, 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) all major improvements to the common property, other than those to which subclause (i) applies,

(iii) any significant utility installations, major easement areas, retaining walls and other similar significant features,

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

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

- (b) where the units and the common property are not substantially completed at the time that the purchase agreement is entered into, 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, and real and personal property intended to be acquired by the corporation,
 - (ii) all major improvements to the common property, other than those to which subclause (i) applies,
 - (iii) any significant utility installations, major easement areas, retaining walls and other similar significant features,
 - (iv) the recreational facilities, equipment and other amenities available for use by the persons residing in or on the residential units,
 - (v) the equipment to be used for the maintenance of property of the corporation, the common property and managed property,
 - (vi) the location of roadways, walkways, fences, parking areas and recreational facilities,
 - (vii) the landscaping, and
 - (viii) where there is a building, the exterior finishing of the building, as it will exist when the developer has fulfilled the developer's obligations under the purchase agreement;
- (c) the amount or estimated amount of the monthly unit contributions based on the budget or proposed budget referred to in section 12(1)(l);
- (d) the unit factor of the unit and the basis of unit factor apportionment for all units included in the condominium plan or proposed condominium plan;
- (e) the occupancy date for the unit.

- (vi) the location of roadways, walkways, fences, parking areas and recreational facilities,*
- (vii) the landscaping, and*
- (viii) where there is a building, the exterior finishing of the building,*
as they will exist when the developer has fulfilled the developer's obligations under the purchase agreement;
- (c) the amount or estimated amount of the monthly unit contributions that has been determined on a reasonable economic basis in respect of the unit;*
- (d) the unit factor of the unit and the basis of unit factor apportionment for all units comprised in the condominium plan.*

Rescission of purchase agreement

13(1) A purchaser may rescind a purchase agreement by providing written notice to the developer within 10 days from the date the purchaser receives all of the information and documents required to be delivered to the purchaser under section 12.

(2) If a purchase agreement is rescinded under subsection (1), the developer shall, within 10 days from the developer's receipt of a written notice of the rescission from the purchaser, return to the purchaser all of the money paid in respect of the purchase of the unit.

Delay in occupancy

13.1 Subject to the regulations, if a delay in occupancy of a unit is more than 90 days beyond the occupancy date set out in the purchase agreement, the purchaser may exercise any remedies provided under the regulations.

Material change before purchaser takes possession

13.2(1) If at any time before a purchaser takes possession of a unit there is a material change in the information and documents provided by the developer to the purchaser under section 12, the developer shall deliver a written notice to the purchaser.

(2) The notice required under subsection (1) must clearly identify all changes that in the reasonable belief of the developer may be material changes, and summarize the particulars of them.

(3) The developer shall in accordance with the regulations deliver the notice required under subsection (1) to the purchaser within a reasonable time after the material change occurs and, in any event, before the day the purchaser takes possession of the unit.

(4) Where a material change referred to in subsection (1) occurs, the purchaser may exercise any of the remedies provided under the regulations.

7 Section 14 is amended

- (a) in subsection (6) by striking out “forthwith” and substituting “within 3 business days”;
- (b) by repealing subsection (7) and substituting the following:

(7) A developer shall keep the money deposited under subsection (6) on deposit in Alberta.

(7.1) A developer shall comply with the requirements respecting trust accounts established by the regulations.

8 Section 16 is repealed and the following is substituted:

Security deposit

16(1) If a purchaser of a residential unit, prior to receiving title to the unit, rents that unit from the developer, the developer may charge the purchaser a security deposit in respect of the unit.

(2) A developer shall not charge an amount under subsection (1) in excess of one month’s rent for the unit.

9 The following is added after section 16:

Documents required

16.1 The developer shall, at the meeting of the corporation convened under section 29, provide to the corporation without charge the original or a copy of the following documents:

- (a) all warranties and guarantees on the real and personal property of the corporation, the common property and managed property;
- (b) the
 - (i) structural, electrical, mechanical and architectural working drawings and specifications, and
 - (ii) as built drawings,

7 Section 14 presently reads in part:

(6) The developer who receives money that is to be held in trust under this section shall forthwith deposit the money into an interest-bearing trust account maintained in a financial institution in Alberta.

(7) Money deposited under subsection (6) is to be kept on deposit in Alberta.

8 Section 16 presently reads:

16 If a purchaser of a residential unit, prior to receiving title to the unit, rents that unit from the developer, the amount that the developer may charge the purchaser as a security deposit in respect of the unit shall not exceed one month's rent charged for the unit.

9 Documents required.

that exist for the real property of the corporation, the common property and managed property;

- (c) the existing plans showing the location of underground utility services, sewer pipes and cable television lines located on the parcel;
- (d) all agreements to which the corporation is a party;
- (e) all certificates, approvals and permits issued by a municipal authority, the Government or an agent of the Government that relate to the real property of the corporation, the common property and managed property;
- (f) any building assessment report required under the *New Home Buyer Protection Act* or, in the case of a conversion, required under section 21.1;
- (g) any reserve fund report required by the regulations;
- (h) any other prescribed document.

10 The heading preceding section 17 is amended by striking out “Management” and substituting “Termination of”.

11 Section 17(1) and (2) are repealed and the following is substituted:

Management agreements

17(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 consisted of directors who were elected to the board when the developer and persons who were not at arm’s length from the developer owned or held units representing more than 50% of the total unit factors for all the units.

(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 when its board

10 The heading preceding section 17 presently reads:

Management Agreements

11 Section 17 presently reads in part:

17(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 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 units were owned by persons other than a developer.

consists of directors who were elected to the board when the developer and persons who were not at arm's length from the developer owned or held units representing fewer than 50% of the total unit factors for all the units.

12 The following is added after section 17:

Other agreements

17.1(1) Except as otherwise provided in section 17 and the regulations, a corporation may terminate an agreement within 12 months after the time at which the board of the corporation first ceases to consist of directors who were elected to the board when the developer and persons who were not at arm's length from the developer owned or held units representing more than 50% of the total unit factors for all the units.

(2) Subsection (1) applies despite any term to the contrary in the agreement to be terminated.

(3) To terminate an agreement under this section, the corporation must give written notice of the termination date to the other party to the agreement at least 60 days, or any shorter period specified in the agreement, before the termination date.

(4) Where a corporation terminates an agreement under this section, the corporation is not liable to the other party to the agreement by reason only of the termination of the agreement under this section.

Return of Corporation Property

Return of corporation property

17.2(1) The original copies of any documents or records prepared for a corporation by a condominium manager or a member of the board of directors of the corporation, including, without limitation, the documents referred to in section 12(1) and prescribed documents, are the property of the corporation.

(2) A condominium manager shall, within 30 days after the termination of a management agreement, at no charge, return to the corporation all property belonging to the corporation, including, without limitation, the documents and records referred to in subsection (1) and prescribed property.

12 Other agreements, return of corporation property.

(3) An individual who ceases to be a member of the board of directors of a corporation shall, within 30 days after ceasing to be a member of the board of directors, at no charge, return to the corporation all property belonging to the corporation, including, without limitation, the documents and records referred to in subsection (1) and prescribed property.

13 Section 20 is amended by adding the following after subsection (8):

(9) On registration of a condominium plan of redivision, the owner of any visitor or handicapped parking space illustrated as a unit in the condominium plan shall transfer the title to the parking space to the corporation.

(10) Where the owner does not transfer the title to a visitor or handicapped parking space in accordance with subsection (9), the corporation

- (a) has a first charge on the unit, and
- (b) may commence an action for specific performance of the transfer.

14 The following is added before section 21:

Application of sections

20.1 Subject to the regulations, sections 10.1 to 16.1 apply to the purchase and sale of conversion units.

15 Section 21(1) and (2) are amended by adding “conversion” before “unit”.

13 Transfer of visitor and handicapped parking spaces.

14 Application of sections.

15 Section 21 presently reads:

21(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.

16 The following is added after section 21:

Preparation of building assessment report for conversion

21.1(1) This section applies to a conversion in respect of a building that is not subject to the *New Home Buyer Protection Act*.

(2) A developer shall, in respect of a conversion, arrange for the preparation of a building assessment report for real property of the corporation, the common property and managed property.

(3) A building assessment report must be prepared in accordance with the regulations.

17 Section 26 is repealed and the following is substituted:

Voting rights

26(1) In the exercise of voting rights under this Act at a general meeting or under section 26.2, each unit has one vote, which may be exercised, subject to this section and section 27, by the owner of the unit.

(2) Where a person owns more than one unit, that person is entitled to vote with respect to each unit owned.

(3) If a unit is owned by more than one person,

(a) in the case of a vote taken by a show of hands where only one co-owner is present personally or by proxy at the meeting, that co-owner is entitled to vote with respect to that unit, and

(b) in the case of a vote taken by a show of hands where more than one co-owner of the unit is present personally

(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.

16 Preparation of building assessment report for conversion.

17 Section 26 presently reads:

26(1) The voting rights of the owner of a unit are determined by the unit factor for the owner's unit.

(2) When an owner's interest is subject to a registered mortgage, a power of voting conferred on the owner by this Act or the bylaws may be exercised as follows:

- (a) first, by the mortgagee, if any, who is first entitled in priority if that mortgagee has notified the corporation of the mortgage in writing and is present at the meeting at which the vote is being conducted;*
- (b) second, by the owner;*
- (c) third and subsequently, in order of their priority among themselves, by any other mortgagees who are subsequent in priority to the mortgagee referred to in clause (a) if the subsequent mortgagee wishing to exercise the power of*

or by proxy at the meeting, those co-owners are entitled to one vote between them with respect to that unit.

(4) If a unit is owned by more than one person, in the case of a vote on the basis of unit factors, the co-owners present personally or by proxy at the meeting are entitled only to vote that portion of the unit factors for that unit that is proportionate to their interest in the unit as described on their certificates of title.

(5) Notwithstanding subsection (4), where a unit is owned by persons as joint tenants, and only one of them is present personally or by proxy at the meeting, the vote of that owner represents the full unit factors for that unit.

(6) Where an owner is a body corporate, it may be represented by a director or officer without a proxy.

(7) When an owner's interest is subject to a registered mortgage, the voting rights of the owner may be exercised as follows:

- (a) first, by the mortgagee, if any, who is first entitled in priority if that mortgagee is present at the meeting at which the vote is being conducted;
- (b) 2nd, by the owner;
- (c) 3rd and subsequently, in order of their priority among themselves, by any other mortgagees who are subsequent in priority to the mortgagee referred to in clause (a) if the subsequent mortgagees wishing to exercise the power of voting have notified the corporation of the mortgage in writing and are present at the meeting at which the vote is conducted.

(8) Subsection (7) does not apply unless the mortgagee has given written notice of the mortgagee's mortgage to the corporation at the corporation's address for service.

(9) Subject to the regulations, an owner or mortgagee, as the case may be, may exercise the owner's or mortgagee's right to vote personally or by proxy.

voting has notified the corporation of the mortgage in writing and is present at the meeting at which the vote is conducted.

(3) Subsection (2) does not apply unless the mortgagee has given written notice of the mortgagee's mortgage to the corporation at the corporation's address for service.

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

(5) Notwithstanding anything in this section, 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.

(6) Notwithstanding that anything under this Act or the bylaws may require a meeting of the corporation to be convened for the purpose of allowing the owners or other persons permitted under this Act or the bylaws to exercise the power of voting, instead of a meeting being convened for the purpose of exercising the powers of voting,

- (a) in the case of an ordinary resolution, the ordinary resolution may be passed by being signed as described in section 1(1)(r), and*
- (b) in the case of a special resolution, the special resolution may be passed by being agreed to in writing as described in section 1(1)(x).*

(10) Notwithstanding anything in this section, neither an owner nor a mortgagee may exercise the owner's or mortgagee's right to vote where

- (a) any contribution payable in respect of the owner's unit, including any interest payable under section 40, is in arrears for more than 60 days immediately before the day of the vote, or
- (b) a judgment by a court of any money owing to the corporation by the owner remains unsatisfied for more than 60 days immediately before the day of the vote.

Method of voting at a general meeting

26.1(1) Except for matters requiring a special resolution or a vote to elect directors of a corporation, all matters must be determined by an ordinary resolution.

(2) A vote on a resolution to be held on a matter at a general meeting may be conducted by a show of hands unless

- (a) the matter requires a special resolution,
- (b) a person entitled to vote requests, either before or promptly after a vote, that the vote be conducted on the basis of the unit factors of the owners' units represented at the meeting, or
- (c) the vote is conducted in writing under section 26.2 or in accordance with subsection (3).

(3) A vote may be conducted at a general meeting by electronic means if there are measures in place to validate the owner's identity and the owner's entitlement to vote.

Voting in writing

26.2(1) Notwithstanding that this Act, the regulations and the bylaws may require a general meeting to be convened for the purpose of voting on a matter, instead of a meeting being convened,

- (a) in the case of an ordinary resolution, the resolution may be passed by being signed as described in section 1(1)(r)(ii), and

(b) in the case of a special resolution, the resolution may be passed by being agreed to in writing as described in section 1(1)(x)(ii).

(2) Where a resolution is to be dealt with under this section, the board shall send to each owner and to each mortgagee who has given written notice under section 26(5) a notice setting out the wording of the resolution and

- (a) the date by which the ballots on the resolution must be received,
- (b) the date on which the ballots will be counted by the board, and
- (c) any other prescribed information.

(3) The date referred to in subsection (2)(b) must be no later than one year from the date the notice of the proposed resolution was sent.

(4) In addition to any other requirements in this Act and the regulations, the results of a resolution dealt with under this section

- (a) must be recorded in the minutes of a meeting of the board and must include
 - (i) the number of votes and unit factors in favour of the resolution, and
 - (ii) the number of votes and unit factors not in favour of the resolution,

and

- (b) must be provided to the owners in accordance with the regulations.

(5) A vote under this section may be conducted by electronic means in accordance with the regulations.

18 Section 28 is amended

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

(1.1) At least 2/3 of the membership of the board of directors of a corporation must be unit owners or mortgagees unless the bylaws provide otherwise.

(b) by repealing subsection (7);

(c) by repealing subsection (10).

19 The following is added after section 28:

Removal or vacating of office of a member of the board

28.1(1) A person ceases to be a member of the board if the member

- (a) becomes a bankrupt as defined in the *Bankruptcy and Insolvency Act* (Canada),
- (b) is more than 60 days in arrears in payment of any contribution required to be made by the member as an owner,
- (c) is more than 60 days in default of a judgment by a court of any money owing to the corporation,
- (d) is or becomes a represented adult as defined in the *Adult Guardianship and Trusteeship Act*,
- (e) is convicted of an indictable offence for which the member is liable to imprisonment for a term of not less than 2 years,
- (f) resigns the member's office by serving notice in writing on the corporation, or
- (g) is removed under subsection (2).

(2) A corporation may by ordinary resolution passed at a general meeting remove a member of the board before the

18 Section 28 presently reads in part:

28(1) A corporation shall have a board of directors that is to be constituted as provided by the bylaws of the corporation.

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

(10) At least 2/3 of the membership of the board of directors of the corporation shall be unit owners or mortgagees unless the bylaws provide otherwise.

19 Removal or vacating of office of a member of the board, exercise of powers and duties by boards.

expiration of the member's term of office and appoint another individual in the member's place to hold that office for the remainder of the term.

Exercise of powers and duties by boards

28.2(1) The powers and duties of a corporation shall, subject to any restriction imposed or direction given in an ordinary resolution, be exercised and performed by the board of the corporation.

(2) An ordinary resolution that directs or restricts the corporation, or interferes with the corporation, in its exercise of powers and performance of duties is not valid if the direction or restriction is contrary to this Act, the regulations or the bylaws.

20 Section 29 is repealed and the following is substituted:

Convening of meeting to elect first board

29(1) When a developer registers a condominium plan, the developer shall within

- (a) 90 days from the day that the certificates of title to 50% of the units have been issued in the name of the purchasers, or
- (b) 180 days from the day that a certificate of title to a unit is first issued to a purchaser,

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

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

21 Sections 30 and 31 are repealed and the following is substituted:

20 Section 29 presently reads:

29(1) When a developer registers a condominium plan, the developer shall within

(a) 90 days from the day that 50% of the units are sold, or

(b) 180 days from the day that the first unit is sold,

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

(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.

21 Sections 30 and 31 presently read:

30(1) The board shall, once every year, convene an annual general meeting of the owners.

Annual general meetings

30(1) The first annual general meeting of the corporation must be convened by the board within 6 months of the meeting convened under section 29.

(2) Subsequent annual general meetings must be convened annually no later than 15 months after the immediately preceding annual general meeting.

(3) Subject to the regulations, written notice of an annual general meeting must be provided to each owner and any mortgagee who has given written notice under section 26(5) no less than 14 days prior to the day on which the meeting is to be convened.

(4) Subject to the regulations, the corporation shall

- (a) prepare 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, and
- (b) before or at the annual general meeting, distribute copies of the financial statements and the annual budget to each of the owners.

Special general meetings

30.1(1) The board may, whenever it considers it appropriate to do so, convene a special general meeting of the corporation by providing written notice to each owner, subject to the regulations, no less than 14 days prior to the day on which the meeting is to be convened.

(2) The board shall, on the written request of owners whose votes represent not less than 15% of the total unit factors for the units, convene a special general meeting of the corporation by providing written notice to each owner no less than 14 days prior to the day on which the meeting is to be convened.

(3) A request under subsection (2) must include the nature of the business to be dealt with at the meeting.

(4) A special general meeting under subsection (2) must be convened within 30 days of receiving the request, and if the

(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.

(3) Subject to the regulations, the corporation shall,

(a) in accordance with generally accepted accounting principles, prepare 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, and

(b) distribute copies of the financial statements and the annual budget to each of the owners.

31 All meetings of the board and all 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 annual general meeting agree to hold the meetings in another location.

board does not convene a meeting within that time period, the owners may convene the meeting.

(5) A notice for a special general meeting must include the purpose for which the meeting is being convened, including the proposed wording of any resolution.

Failure to give notice

30.2 Failure to give proper notice of a general meeting to a person entitled to receive notice of the meeting under this Act does not invalidate anything done at that meeting as long as a reasonable attempt to give the notice was made.

Notice of meetings to mortgagees

30.3 On being notified by a mortgagee entitled to vote under section 26 that the mortgagee wishes to be notified of general meetings, the board shall give to that mortgagee the same notices of a general meeting as are required to be given to an owner.

Venue of meeting

31(1) Meetings of the board and general meetings of the corporation must be held within the municipality in which the units are located unless an ordinary resolution to hold the meetings in another location is passed at a general meeting of the corporation.

(2) Notwithstanding subsection (1), a member of the board may participate in a meeting of the board by electronic means or other communication facilities if the electronic means or other communication facilities enable the board members participating in the meeting and any other persons attending the meeting to hear each other.

(3) Members of the board participating in a meeting of the board by electronic means or other communication facilities are deemed to be present at the meeting.

22 Section 32 is amended

(a) **in subsection (1) by striking out** “and the common property” **and substituting** “, the common property and managed property”;

22 Section 32 presently reads:

32(1) The bylaws 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.

(b) by repealing subsection (7).

23 The following is added after section 32:

Rules

32.1(1) Subject to the regulations, the board may, by resolution, make, amend or repeal rules respecting the use, safety and condition of the property of the corporation, the common property and managed property.

(2) The rules must be reasonable and consistent with this Act, the regulations and the bylaws.

(3) Subject to the regulations, the board must inform owners and tenants of any rules made, amended or repealed.

(4) If a rule or a proposed rule is inconsistent with this Act, the regulations or the bylaws, this Act, the regulations or the bylaws, as the case may be, prevail.

(2) The owners of the units and anyone in possession of a unit are bound by the bylaws.

(3) Any bylaw may be amended, repealed or replaced by a special resolution.

(4) An amendment, repeal or replacement of a bylaw 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.

(5) No bylaw 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.

(6) The bylaws bind the corporation and the owners to the same extent as if the bylaws 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 bylaws.

(7) If there is a conflict between the bylaws and this Act, this Act prevails.

23 Board rules.

24 The following is added after section 34:

Conflict with bylaws

34.1 If there is a conflict between a bylaw and this Act or the regulations, this Act or the regulations, as the case may be, prevail.

25 Section 35 is repealed and the following is substituted:

Sanctions for failure to comply with bylaws

35(1) A corporation may by bylaw establish monetary or other sanctions that may be imposed on owners, tenants and occupants who fail to comply with the bylaws.

(2) A bylaw 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 bylaw under which sanctions may be imposed may be general or specific in its application.

(4) A sanction imposed under this section must be reasonable in the circumstances for which it is imposed.

(5) Where a person fails to abide by a sanction or to pay to the corporation a monetary sanction imposed under a bylaw, the corporation may proceed under section 36 to enforce the sanction.

(6) 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.

(7) A monetary sanction imposed under this section must not exceed the amount prescribed by the regulations.

24 Conflict with bylaws.

25 Section 35 presently reads:

35(1) The corporation may by bylaw impose monetary or other sanctions on owners, tenants and invitees of the owners or tenants who fail to comply with the bylaws.

(2) A bylaw 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 bylaw under which sanctions may be imposed may be general or specific in its application.

(4) A sanction imposed under this section must be reasonable in the circumstances for which it is imposed.

(5) Where a person fails to abide by a sanction or to pay to the corporation a monetary sanction imposed under a bylaw, the corporation may proceed under section 36 to enforce the sanction.

(6) 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..

Limitation on sanctions and fees

35.1 A corporation may impose a monetary sanction on or charge a fee to an owner, tenant or occupant only where authorized by this Act, the regulations or the bylaws.

26 Section 36 is amended

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

- (a) take proceedings under Part 4 of the *Provincial Court Act* to recover from the person
 - (i) a monetary sanction, or
 - (ii) damages, in the case of any other sanction, in an amount not exceeding the amount that may be granted in damages under the *Provincial Court Act*,

or

(b) in subsection (1)(b) by striking out “of not more than \$10 000” wherever it occurs;

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

(8) A caveat in respect of a monetary sanction or other debt to a corporation, other than a contribution under section 39, may be registered against the certificate of title of a unit only pursuant to a writ of enforcement.

27 Section 37 is amended

(a) in subsection (1) by striking out “property and the common property” and substituting “property, the common property and managed property”;

(b) in subsection (2)(a) by striking out “corporation and the common property” and substituting “corporation, the common property and managed property”;

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

26 Section 36 presently reads in part:

36(1) If a person fails to comply with a sanction or to pay a monetary sanction imposed pursuant to a bylaw, the corporation may, in respect of the contravention,

(a) take proceedings under Part 4 of the Provincial Court Act to recover from the person

(i) a monetary sanction, or

(ii) damages, in the case of any other sanction,

in an amount not exceeding the amount that may be granted in damages under the Provincial Court Act, or

(b) take proceedings in the Court of Queen's Bench to recover from the person

(i) a monetary sanction of not more than \$10 000, or

(ii) damages of not more than \$10 000, in the case of any other sanction.

(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.

27 Section 37 presently reads:

37(1) A corporation is responsible for the enforcement of its bylaws and the control, management and administration of its real and personal property and the common property.

(2) Without restricting the generality of subsection (1), the duties of a corporation include the following:

(4) A corporation may, by special resolution, borrow money for the purpose of carrying out the powers and duties of the corporation under this section, and may secure the repayment of the money and the payment of interest on the money by means of any combination of the following:

- (a) a negotiable instrument;
- (b) a mortgage of unpaid contributions, whether levied or not;
- (c) a mortgage of any real or personal property of the corporation.

(5) Money borrowed by the corporation under subsection (4) must be used only for the purpose for which it was borrowed.

28 Section 38 is amended

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

Reserve fund

38(1) Subject to the regulations, a corporation shall, from funds levied under section 39(a), establish and maintain a reserve fund to be used to provide funds that are reasonably sufficient to provide for major repairs and replacement of the following, where the repair or replacement is of a nature that does not normally occur annually:

- (a) any property of the corporation;
- (b) the common property;
- (c) managed property.

(1.01) Notwithstanding subsection (1), funds from the reserve fund may be used for

- (a) a reserve fund study and reserve fund report required by the regulations,
- (b) any other report prepared by an expert examining the condition of the real and personal property of the

- (a) to keep in a state of good and serviceable repair and properly maintain the real and personal property of the corporation and the common property;*
 - (b) to comply with notices or orders by any municipal authority or public authority requiring repairs to or work to be done in respect of the parcel.*
- (3) A corporation may by a special resolution acquire or dispose of an interest in real property.*

28 Section 38 presently reads:

38(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

- (a) any real and personal property owned by the corporation,*
- (b) the common property, and*
- (c) any property of an owner in respect of a bare land unit that the corporation is required by bylaw to repair and replace,*

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

(1.1) If, before the coming into force of subsection (1)(c), a corporation was required by bylaw to repair and replace property of an owner of a bare land unit, the collection and expenditure of funds to repair and replace that property are valid if

- (a) the collection and expenditure occurred on or after the date the bylaw took effect under this Act, and*
- (b) the collection and expenditure would have been in compliance with subsection (1) if subsection (1)(c) had been in force at the time the collection and expenditure occurred.*

corporation, the common property and managed property, and

(c) any other purpose provided for in the regulations.

(b) in subsection (1.1) by adding “as enacted by section 1(2)(a) of the *Statutes Amendment Act, 2013*” **after** “subsection (1)(c)”;

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

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

(a) the removal of funds for that purpose is authorized by a special resolution or is necessary to maintain property referred to in subsection (1) to comply with health, building and maintenance and occupancy standards as required by law, and

(b) there will be sufficient funds remaining in the reserve fund to meet the requirements of subsection (1).

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

(4) For the purposes of this section and section 39.1, the following are not capital improvements:

(a) the replacement of existing property of the corporation, the common property or managed property with

(i) the contemporary equivalent of an obsolete property, or

(ii) a lower cost equivalent of the existing property;

(b) any other replacement prescribed by the regulations.

29 Section 39 is repealed and the following is substituted:

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

(a) the removal of funds for that purpose is authorized by a special resolution, and

(b) after the removal of funds pursuant to the special resolution, there are sufficient funds remaining in the capital replacement reserve fund to meet the requirements of subsection (1).

(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.

29 Section 39 presently reads:

39(1) In addition to its other powers under this Act, the powers of a corporation include the following:

Operating account

38.1(1) Subject to the regulations, a corporation shall, from funds levied under section 39(a), establish and maintain an operating account to be used to provide sufficient funds for

- (a) the control, management and administration of the real and personal property of the corporation, the common property and managed property, and
- (b) the payment of any other obligation of the corporation,

that are not required to be paid out of the reserve fund.

(2) Where during a corporation's fiscal year the amount of expenses paid or payable out of the operating account exceeds the amount approved in the budget for that fiscal year by more than the prescribed amount, the board must provide a notice to the owners in accordance with the regulations.

Contributions

39 A board may by resolution

- (a) determine from time to time the amounts to be raised, and the frequency at which these amounts are to be paid, for the purposes of the operating account and the reserve fund and may raise those amounts by levying contributions on the owners
 - (i) in proportion to the unit factors of the owners' respective units, or
 - (ii) subject to the regulations, if provided for in the bylaws, on a basis other than in proportion to the unit factors of the owners' respective units;
- (b) determine from time to time amounts to be raised by special levy and raise those amounts in accordance with section 39.1.

Special levy

39.1(1) A resolution of the board under section 39(b) to approve a special levy must set out the following:

- (a) the purpose of the levy;

- (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*
 - (i) *in proportion to the unit factors of the owners' respective units, or*
 - (ii) *if provided for in the bylaws, on a basis other than in proportion to the unit factors of the owners' 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 bylaw, or*
 - (ii) *as required by a municipal authority or other public authority,*

in respect of the unit or common property that is leased to that owner under section 50.

(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

- (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) Where a contribution is levied under subsection (1) and is not paid by the owner, the mortgagee may pay any amount owing in

- (b) the total amount to be levied;
- (c) the method to be used to determine each unit's share of the levy if not based on unit factors;
- (d) the date by which the levy is to be paid or, if the levy is payable in instalments, the dates by which the instalments are to be paid.

(2) If the purpose of the special levy is for the making of a capital improvement, a special resolution is required before the board may approve the special levy.

(3) As soon as possible after the passing of a resolution referred to in subsection (1), the board must inform each owner of the following:

- (a) the purpose of the levy;
- (b) the total amount of the levy;
- (c) the method used to determine each unit's share of the levy;
- (d) the amount of the owner's unit's share of the levy;
- (e) the date by which the levy is to be paid or, if the levy is payable in instalments, the dates by which the instalments are to be paid.

(4) If the amount collected exceeds the amount required or for any other reason is not fully used for the purpose set out in the resolution referred to in subsection (1), the corporation must pay to each owner the portion of the unused amount of the special levy that is proportional to the contribution made to the special levy in respect of that owner's unit.

(5) Despite subsection (4), if an amount to be paid is less than a prescribed amount, that amount may be dealt with in accordance with the regulations.

(6) In subsection (4), "amount collected" means the amount collected on a special levy and includes any interest or income earned on that amount.

respect of that contribution and add that amount to the amount owing to the mortgagee under the mortgage.

(4) 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,*

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.

(5) Where a person in possession of a unit other than the owner pays the rent to the corporation under subsection (4), that person is deemed to have paid that rent to the owner.

(6) A corporation shall, on the application of an owner, purchaser or mortgagee or the solicitor of an owner, purchaser or mortgagee, or a person authorized in writing by any of those persons, 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.

(7) 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 the owner.

(8) On the filing of the caveat under subsection (7), the corporation has a charge against the unit equal to the unpaid contribution.

Payment and enforcement of contributions

39.2(1) A contribution levied as provided in section 39(a) is due and payable on the passing of a resolution by the board to that effect and in accordance with the terms of the resolution, and a contribution levied under section 39(b) is due and payable in accordance with a resolution of the board passed under section 39.

(2) A contribution referred to in subsection (1), and any interest charged under section 40, may be recovered by an action for debt by the corporation

- (a) from a person who was an owner at the time when the resolution of the board was passed, and
- (b) from a person who was an owner at the time when the action was instituted,

both jointly and severally.

(3) Where a contribution, including any interest owing, 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.

(4) 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) contributions, including any interest owing in respect of that unit are in arrears,

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 so that that rent can be applied against the contributions, including any interest owing, that are in arrears.

(5) Where a person in possession of a unit other than the owner pays the rent to the corporation under subsection (4), that person is deemed to have paid that rent to the owner.

(6) 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 and interest payable but unpaid by the owner.

(9) A charge under subsection (8) 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.

(10) The Dower Act and Part 10 of the Civil Enforcement Act do not apply to proceedings under subsection (9).

(11) 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.

(12) Notwithstanding subsection (9), 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

(i) a foreclosure action,

(ii) an action for specific performance, or

(iii) a public auction conducted under Part 10, Division 8 of the Municipal Government Act,

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.

(7) On the filing of the caveat under subsection (6), the corporation has a charge against the unit equal to the unpaid contributions and any interest owing.

(8) On and from the date of filing of the caveat, a charge under subsection (7) has the same priority as a mortgage under the *Land Titles Act* and may be enforced in the same manner as a mortgage.

(9) The *Dower Act* and Part 10 of the *Civil Enforcement Act* do not apply to proceedings under subsection (8).

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

(11) Notwithstanding subsection (8), 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
 - (i) a foreclosure action,
 - (ii) an action for specific performance, or
 - (iii) a tax recovery proceeding under the *Municipal Government Act*,

and

- (c) an amount remains owing to the corporation with respect to the contribution and interest for which the caveat was filed,

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

30 Section 41 is repealed.

30 Section 41 presently reads:

41 If any interest referred to in section 40 or a deposit referred to in section 53(3) is owing by an owner to a corporation, the corporation may, in addition to any rights of recovery that it has in law, recover that amount in the same manner as a contribution

31 Section 42(b) is amended by adding “prescribed” after “reasonable”.

32 Section 43 is repealed and the following is substituted:

Investments

43 Subject to section 37(3) and the regulations, a corporation may invest any funds not immediately required by it only in accordance with the regulations.

Trust money

43.1(1) Where the corporation or any person is in receipt of money paid to or for the benefit of the corporation, that money and all the proceeds arising from that money are

- (a) legally and beneficially owned by the corporation, and
- (b) deemed to be held in trust for the performance of the duties and obligations in respect of which the payment was made.

(2) Where the corporation is in receipt of money referred to in subsection (1), the corporation shall

- (a) except as otherwise authorized in writing pursuant to a resolution of the board,

under section 39 and for that purpose that amount is to be considered as a contribution under section 39.

31 Section 42 presently reads:

42 Where a corporation takes any steps to collect any amount owing under section 39, the corporation may

- (a) recover from the person against whom the steps 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.*

32 Section 43 presently reads:

43(1) Subject to section 37(3) and the regulations, a corporation may invest any funds not immediately required by it only in accordance with the regulations.

(2) Where the corporation or any person is in receipt of money paid to or for the benefit of the corporation, that money and all the proceeds arising from that money are deemed to be held in trust for the performance of the duties and obligations in respect of which the payment was made.

(3) Where the corporation is in receipt of money referred to in subsection (2), the corporation shall

- (a) except as otherwise authorized in writing pursuant to a resolution of the board,*
 - (i) deposit all the money into a separate account at a bank, trust company, credit union or treasury branch within 2 banking days from the day that the corporation received the money, and*
 - (ii) designate the account as a trust account registered in the name of the corporation,*

- (i) deposit all the money into a separate account at a bank, trust corporation, credit union or treasury branch within 3 business days from the day that the corporation received the money, and
- (ii) designate the account as a trust account registered in the name of the corporation,

and

- (b) 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 (a).

Estoppel certificate

43.2 On the written request of an owner, purchaser or mortgagee or the solicitor of an owner, purchaser or mortgagee, or a person authorized in writing by any of those persons, the corporation shall, within 10 days after receiving the request, certify

- (a) the amount of any contribution payable by the owner,
- (b) the frequency at which contributions are payable,
- (c) the amount of contributions payable that is in arrears, 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 as of the date of the certificate.

33 Section 44 is repealed and the following is substituted:

Information and documents on request

44(1) On the written request of an owner, purchaser or mortgagee of a unit, the corporation shall, within 10 days after receiving the request, provide to the person making the request any prescribed information or documents as requested by that person.

and

- (b) 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 (a).*

33 Section 44 presently reads:

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

- (a) a statement setting out the amount of any contributions due and payable in respect of the unit;*

(2) The corporation may provide any prescribed information or documents requested under subsection (1) in electronic form unless the person requesting the information or documents specifically requests that they be provided in paper form.

Fees for information or documents

44.1 A corporation may, where authorized by regulation, charge fees in the amount prescribed in the regulations for producing and providing any prescribed information or documents requested under section 44 or otherwise required to be provided under this Act or the regulations.

Retention of documents

44.2 A corporation shall retain any prescribed documents for at least the period of time prescribed in relation to that document.

- (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) the particulars of any post tensioned cables that are located anywhere on or within the property that is included in the condominium plan;*
- (f) a copy of the budget of the corporation;*
- (g) a copy of the most recent financial statements, if any, of the corporation;*
- (h) a copy of the bylaws of the corporation;*
- (i) a copy of any minutes of proceedings of a general meeting of the corporation or of the board;*
- (j) a statement setting out the amount of the capital replacement reserve fund;*
- (k) a statement setting out the amount of the monthly contributions and the basis on which that amount was determined;*
- (l) a statement setting out the unit factors and the criteria used to determine unit factor allocation;*
- (m) a statement setting out any structural deficiencies that the corporation has knowledge of at the time of the request in any of the buildings that are included in the condominium plan;*

34 The heading preceding section 46 and section 46 are repealed.

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

34 The heading preceding section 46 and section 46 presently read:

Documents, Specifications and Approvals

Documents required

46(1) The owner of the land at the time a condominium plan is registered shall provide to the corporation without charge not later than 180 days from the day the condominium plan is registered the original or a copy of the following documents:

- (a) *all warranties and guarantees on the real and personal property of the corporation and the common property for which the corporation is responsible;*

(b) *the*

- (i) *structural, electrical, mechanical and architectural working drawings and specifications, and*

(ii) *as built drawings,*

that exist for the common property for which the corporation is responsible;

- (c) *the plans that exist showing the location of underground utility services, sewer pipes and cable television lines located on the common property;*

(d) *all written agreements that the corporation is a party to;*

- (e) *all certificates, approvals and permits issued by a municipal authority, the Government or an agent of the Government that relate to any property for which the corporation is responsible.*

(2) A corporation may at any time before it receives a document under subsection (1) make a written request to the owner of the land referred to in subsection (1) for a copy of that document and that person shall, within 20 days after receiving that request, provide to

35 Section 47(1) is amended by striking out “A corporation” and substituting “Subject to the regulations, a corporation”.

36 Section 48 is repealed and the following is substituted:

Notification of insurance coverage changes

48 A corporation shall, when there is a change in one or more of the following matters with respect to the corporation’s insurance policy, provide each owner with written notice of the change and a copy of the insurance certificate reflecting the change within 30 days of the date the corporation receives the insurance certificate:

the corporation without charge a copy of that document if the document is in the possession of that person.

35 Section 47(1) presently reads:

47(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 common property against loss resulting from destruction or damage caused by any peril prescribed by or otherwise required by the regulations to be insured against,*
- (b) 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 any peril prescribed by or otherwise required by the regulations to be insured against,*
- (c) shall, if required to do so by bylaw, place and maintain insurance on the improvements made to the units by the owners against loss resulting from destruction or damage caused by any peril prescribed by or otherwise required by the regulations to be insured against, and*
- (d) may place and maintain insurance on the units and the common property, or either of them, against additional perils other than those required to be insured against under clauses (a), (b) and (c),*

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

36 Section 48 presently reads:

48 On the 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*

- (a) the amount of the deductible payable in the event of a claim;
- (b) the replacement value of the coverage;
- (c) any addition to permitted exclusions;
- (d) any other matter prescribed in the regulations.

37 Section 50 is repealed and the following is substituted:

Exclusive possession areas

50(1) Notwithstanding section 49, a corporation may, by means of a bylaw, lease, licence or other instrument, grant an owner the right to exercise exclusive possession in respect of an area of the common property.

(2) A grant of the right to exercise exclusive possession may be withdrawn according to the terms of the bylaw, lease, licence or other instrument referred to in subsection (1).

(3) Where the corporation grants a right to exercise exclusive possession under subsection (1), the corporation may require the owner, under the bylaw, lease, licence or other instrument, to maintain and repair the area of the common property that is the subject of the grant.

(4) Despite subsection (3), where an owner fails to maintain or repair the area of the common property in compliance with the requirements under subsection (3), the corporation may carry out the necessary maintenance or repairs.

(5) A corporation may recover from an owner by an action in debt any reasonable costs it has incurred

- (a) for the purposes of maintenance or repairs under subsection (4),
- (b) pursuant to the regulations, or
- (c) as required by a municipal authority or other public authority

(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.

37 Section 50 presently reads:

50(1) Notwithstanding section 49, 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.

in respect of the area of the common property that is the subject of a grant to the owner of the right to exercise exclusive possession under subsection (1).

38 Section 53 is amended

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

- (b) the maintenance or repair of any area of the common property that is the subject of a grant to an owner of the right to exercise exclusive possession under section 50(1),

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

- (8)** If a deposit referred to in subsection (3) is owing by an owner to a corporation, the corporation may, in addition to any rights of recovery that it has in law, recover that amount in accordance with section 39.2 as if it were a contribution.

39 Section 67(1)(a) is amended by adding the following after subclause (iii):

- (iii.1) the conduct of an owner that is oppressive or unfairly prejudicial to the corporation, a member of the board or another owner;

38 Section 53(3) presently reads:

(3) The corporation may require an owner who rents the owner's 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 50,*

39 Section 67(1)(a) presently reads:

67(1) In this section,

- (a) "improper conduct" means*
 - (i) non-compliance with this Act, the regulations or the bylaws 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,*
 - (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*

40 Section 69 is amended by adding the following after subsection (2):

(3) If a party to an arbitration agreement under subsection (1) makes an application to the Tribunal in respect of a matter in dispute that is to be submitted to arbitration under the arbitration agreement, the Tribunal shall, on the application of another party to the arbitration agreement, stay the proceeding to which the application relates.

41 The following is added after section 69:

Tribunal

Definitions

69.1 In this section and sections 69.2 to 69.9,

- (a) “dispute” means a dispute respecting any matter arising under this Act or the regulations, or in respect of the bylaws or rules of a corporation, involving 2 or more interested parties;
- (b) “interested party” means an owner, a corporation, a member of the board, a developer, a purchaser, a condominium manager, an occupant of a unit, an administrator appointed under section 58, a registered mortgagee or any other person who has a registered interest in a unit.

Geographic region

69.2 Sections 69.3 to 69.9 apply only in respect of the geographic region or regions of the Province specified in the regulations.

- (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;*

40 Section 69 presently reads:

69(1) Any dispute respecting any matter arising under this Act or in respect of the bylaws of a corporation may, with the agreement of the parties to the dispute,

(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.

41 Establishment of Tribunal.

Jurisdiction of the Tribunal

69.3(1) Subject to this section and the regulations, the Tribunal may hear any dispute.

(2) The Tribunal may not hear a dispute respecting

- (a) the enforcement of unpaid contributions,
- (b) the modification of a condominium plan,
- (c) any matter under section 49, 51, 52, 55, 56, 59, 60, 61, 62, 63 or 64, or
- (d) any matter specified in the regulations.

(3) Notwithstanding section 36, a sanction issued by a corporation under section 35 may be enforced only by the Tribunal, and in such case the Tribunal is deemed to be a court for the purposes of section 36.

(4) Any fee charged by a corporation in respect of a cost incurred by a corporation resulting from the act of an owner or occupant of a unit may be enforced only by the Tribunal.

(5) The Tribunal has all the necessary jurisdiction and authority to perform any duties assigned to it by the Lieutenant Governor in Council in addition to the matters referred to in subsections (1), (3) and (4).

Application to court or Tribunal

69.4(1) A dispute must proceed in the forum in which the application in respect of the dispute was first filed.

(2) Notwithstanding subsection (1), where an application in respect of a dispute is filed with a court and the Tribunal has jurisdiction to hear the dispute, the court may, with the agreement of all the interested parties to the dispute, refer the dispute to the Tribunal.

(3) Where the interested parties to a dispute in respect of which an application is filed either in a court or with the Tribunal have a related dispute, the related dispute must be consolidated with the filed dispute.

(4) Where an application in respect of a dispute is filed with the Tribunal, the Tribunal shall, if the Tribunal does not have the authority to order the relief sought in the application, refer the matter to a court.

(5) On application, the court or the Tribunal, as the case may be, may do one or more of the following:

- (a) determine for the purposes of subsection (3) when disputes between interested parties are related;
- (b) consolidate disputes;
- (c) sever disputes.

(6) On application, the court or the Tribunal shall refer a dispute to the forum of first filing or, if pursuant to section 69.3 the court or the Tribunal has no jurisdiction to hear the dispute, to the other forum.

Authority of Tribunal

69.5(1) The Tribunal may, by order, do one or more of the following in respect of a dispute it hears:

- (a) award damages;
- (b) award costs;
- (c) award interest;
- (d) grant restitution;
- (e) nullify a sanction issued by a corporation;
- (f) grant a temporary or permanent stay of a sanction issued by a corporation;
- (g) require the production of a specific document, record or thing;
- (h) if the Tribunal is satisfied that one of the interested parties to the dispute is carrying on improper conduct, appoint an investigator to review the improper conduct and report to the Tribunal;

- (i) direct an interested party to the dispute carrying on improper conduct to cease the improper conduct;
 - (j) give directions as to how matters are to be carried out so that improper conduct will not recur or continue, including directing an interested party to the dispute to take steps to comply with this Act;
 - (k) make a declaration on any matter specified in the regulations;
 - (l) appoint an administrator under section 58 as if the Tribunal were the Court;
 - (m) dismiss a dispute;
 - (n) grant any other relief provided for by the regulations.
- (2)** Subject to the regulations, the Tribunal may vary or reconsider any order or decision made by it.
- (3)** The Tribunal is not bound by the rules of evidence applicable in judicial proceedings.
- (4)** The Tribunal may
- (a) establish a date by which something must be done, and vary such a date;
 - (b) determine the validity, sufficiency and timeliness of the service of a notice, document or order.

Powers of tribunal officers

69.51(1) A tribunal officer, for the purposes of hearing disputes,

- (a) has the same power as is vested in the Court for the trial of civil actions
 - (i) to summon and enforce the attendance of witnesses,
 - (ii) to compel witnesses to give evidence on oath or otherwise,

- (iii) to compel witnesses to give evidence in person or otherwise, and
- (iv) to compel witnesses to produce any record, object or thing that relates to the matter being heard,
- (b) may decide questions of the sufficiency, validity or timeliness of service of documents,
- (c) may take evidence under oath, and
- (d) may administer oaths for the purpose of taking evidence.

(2) If any person fails to attend, to answer questions or to produce a record, object or thing as required under subsection (1)(a), or conducts himself or herself in a manner that might be in contempt of the Tribunal or its proceedings, the Tribunal may apply to the Court for an order committing that person for contempt in the same manner as if that person were in breach of an order or judgment of that Court, or restraining any conduct found by the Court to be in contempt of the Tribunal or its proceedings.

(3) On an application under subsection (2), the Court may grant any order that, in the opinion of the Court, is necessary to enable the Tribunal to carry out its duties.

Application and proceedings

69.6(1) An application to the Tribunal must be made in accordance with the regulations.

(2) The Tribunal shall conduct all proceedings and decide all applications to it

- (a) subject to any limitations and restrictions set out in the regulations, and
- (b) in accordance with the rules of practice and procedure established pursuant to the regulations.

Binding nature of order

69.7(1) An order of the Tribunal is final and binding on the parties to the dispute.

(2) An order of the Tribunal may be filed in the Court and, on being filed, is enforceable in the same manner as an order of the Court.

Judicial review

69.8(1) An application for judicial review of a Tribunal's decision, act or order must be filed and served not later than 45 days from the date of the decision, act or order.

(2) If an application for judicial review is made under subsection (1), the Tribunal's order may be stayed until the Court deals with the application.

Protection from liability

69.81 No action lies against tribunal officers and employees required for the administration of the Tribunal who are appointed under the regulations for anything done or omitted to be done by any of them in good faith while exercising their powers and performing their duties under this Act or the regulations.

Regulations regarding Tribunal

69.9 The Lieutenant Governor in Council may make regulations respecting the establishment of a Tribunal for the purpose of resolving disputes arising in respect of matters under this Act, including, without limitation, regulations

- (a) respecting the establishment of the Tribunal and the appointment of tribunal officers, including a chair, and any other employees required for the administration of the Tribunal;
- (b) providing for the payment of remuneration and expenses to tribunal officers and employees;
- (c) respecting the geographic region or regions of the Province to which sections 69.3 to 69.9 apply;
- (d) respecting applications to the Tribunal, including applications that include a claim for damages, compensation or other relief;
- (e) respecting rules of practice and procedure governing proceedings before the Tribunal;

- (f) respecting a code of conduct applicable to the tribunal officers;
- (g) respecting alternative dispute resolution processes that the Tribunal may require the parties to a dispute to undertake;
- (h) specifying matters in respect of which the Tribunal may not hear a dispute;
- (i) respecting the manner of referring an application from a court to the Tribunal under section 69.4(2);
- (j) respecting the manner of referring a matter to a court under section 69.4(4);
- (k) respecting the determination and treatment of related disputes;
- (l) respecting other relief that a Tribunal may grant under section 69.5;
- (m) respecting the powers and duties of the chair, tribunal officers and any other employees;
- (n) respecting the matters that tribunal officers may or shall consider when dealing with a dispute;
- (o) respecting the making of Tribunal orders;
- (p) respecting the fees that may be charged by the Tribunal and providing for the waiver of any fee;
- (q) respecting the manner of establishing forms for the purposes of sections 69.2 to 69.8 and providing for their use;
- (r) respecting the service of notices, documents or orders;
- (s) respecting bringing copies of documents registered at a land titles office, including the bylaws and condominium plan of a corporation, before the Tribunal;
- (t) respecting the publication of orders and other documents of the Tribunal;

- (u) respecting any matter or thing that the Lieutenant Governor in Council considers necessary or appropriate to carry out the intent and purposes of sections 69.2 to 69.8.

42 Section 71(1)(a) is amended

- (a) **by striking out “registered” and substituting “recorded”;**
- (b) **in subclauses (i) and (ii) by striking out “73(2)” and substituting “73”.**

43 The following is added after section 71:

Service on owner

71.1(1) A document, including any written notice or request, may be served by a corporation on an owner

- (a) by personal service on the owner,
- (b) by ordinary mail or recorded mail addressed to
 - (i) the owner’s address as registered at a land titles office, or
 - (ii) an alternative address for service provided by the owner to the corporation,

or

42 Section 71(1) presently reads:

71(1) A document including any written notice or request may be served on a corporation

(a) by leaving it at or by sending it by registered mail

(i) if a change of address for service has not been filed under section 73(2), to the address shown on the condominium plan, or

(ii) if a change of address for service has been filed under section 73(2), to the address for service shown on the latest notice filed,

or

(b) by personal service on a member of the board.

43 Service on owner.

- (c) by electronic means to an electronic address that the owner has specifically provided as an address to which information may be provided by those electronic means.

(2) Service is deemed to have been effected

- (a) on the date on which acknowledgment of receipt of recorded mail is signed,
- (b) 7 days after the date on which the document is sent by ordinary mail, or
- (c) 24 hours after the document is sent by electronic means.

44 Section 72 is amended by striking out “registered” wherever it occurs and substituting “recorded”.

44 Section 72 presently reads:

72(1) A corporation may serve on a landlord a notice given under section 54 or an application or order referred to in section 55 or 56

(a) by personal service, or

(b) by registered mail sent to the address given to the corporation under section 53.

(2) A corporation may serve on a tenant a notice given under section 54 or an originating notice or order referred to in section 55 or 56

(a) by personal service, or

(b) if the tenant cannot be served personally by reason of the tenant's absence from the premises or by reason of the tenant evading service,

(i) by giving it to an adult person who apparently resides with the tenant,

(ii) by posting it in a conspicuous place on some part of the premises, or

(iii) by sending it by registered mail to the tenant at the address where the tenant resides.

45 Section 73 is amended by adding the following after subsection (1):

(1.1) A corporation shall file a change of address for service made under subsection (1) at a land titles office.

46 Section 74 is repealed.

47 The following is added after section 78:

Inspections and Investigations

Appointment and identification of inspector

78.01(1) The Minister may appoint individuals as inspectors.

(2) An inspector who enters any place under the authority of this Act must, on request,

- (a) produce a document that identifies the person as an inspector under this Act, and
- (b) explain the purpose for which the inspector is entering the place.

Inspection and investigation

78.02(1) Any record or document required to be created or maintained under this Act or the regulations under this Act must be available for inspection by an inspector.

(2) An inspector may, at any reasonable time, enter the business premises of a developer and inspect the operation and records and documents of the developer for the purpose of determining whether this Act is being complied with.

(3) Where an inspector has reasonable grounds to believe that a person has committed an offence under this Act or the regulations, the inspector may, at any reasonable time, enter any

45 Section 73 presently reads:

73(1) A corporation may by resolution of the board change its address for service.

(2) A change in the address for service under subsection (1) does not take effect until a notice of that change of address is filed in the prescribed form at the land titles office.

46 Section 74 presently reads:

74 The corporation may charge a reasonable fee to compensate it for the expenses it incurs in producing and providing a document required under this Act.

47 Inspections, investigations, undertakings, Director's orders, administrative penalties, court actions and appeals.

premises, other than a private dwelling place, to conduct an investigation.

(4) In carrying out an inspection or investigation an inspector may, at any reasonable time,

- (a) require any person to answer any relevant question and direct the person to answer the question under oath,
- (b) demand the production for examination of any records or documents that are relevant to the inspection or investigation,
- (c) on giving a receipt for them, remove records and documents that are relevant to the inspection or investigation for the purpose of examining them and making copies of them, and
- (d) make copies or take photographs of any record removed under clause (c).

(5) If an inspector removes any records or documents during an inspection or investigation, the inspector

- (a) shall give a receipt for the records or documents to the person from whom they were taken, and
- (b) shall return any records or documents within a reasonable time after they have served the purposes for which they were taken.

(6) On request, an inspector shall provide a copy of any records removed during an inspection or investigation to the person from whom they were taken.

(7) A developer and any person working in the business premises of a developer or in a premises referred to in subsection (3) shall co-operate with an inspector acting under the authority of this section.

(8) A developer shall, at a location within Alberta, produce any books, records, documents or other things requested by an inspector that are relevant to determine if there is compliance with the developer's duties under this Act and the regulations.

(9) The Director may apply to the Court for

- (a) an order directing any person
 - (i) to produce to an inspector any records or documents relevant to the inspection or investigation in the person's possession or under the person's control, and
 - (ii) to give up possession of any record or document described in subclause (i) to allow the inspector to take it away to examine and copy it and to return it within a reasonable time,

and

- (b) an order directing any person to attend before the inspector to answer any relevant inquiries the inspector may have relating to the inspection or investigation.

(10) An application for an order under subsection (9) may be made without notice if the Court is satisfied that it is proper to make the order in the circumstances.

Undertakings

Developer's undertakings

78.1(1) When

- (a) the Director is of the opinion that a developer has contravened this Act or the regulations, and
- (b) the Director is satisfied that the developer has ceased the contravention,

the developer may enter into an undertaking with the Director in the form and containing the provisions that the Director, on negotiation with that developer, considers proper.

(2) Without limiting subsection (1), an undertaking may include any of the following specific undertakings:

- (a) to stop engaging in a practice or to change a practice described in the undertaking;

- (b) to provide compensation to anyone who has suffered a loss;
- (c) to publicize the undertaking or the action being taken;
- (d) to pay the costs of investigating the developer's activities and any costs associated with the undertaking.

(3) The Director must maintain a public record of all undertakings entered into under this section.

Change in undertaking by Director

78.11(1) A developer who enters into an undertaking may apply to the Director to vary or cancel that undertaking.

(2) On considering the application, the Director may

- (a) refuse the application, or
- (b) vary or cancel the undertaking.

Change in undertaking by Court

78.12(1) Despite section 78.11, a developer who enters into an undertaking may apply to the Court for an order to vary or cancel the undertaking.

(2) On considering an application, the Court may

- (a) refuse the application, or
- (b) vary or cancel the undertaking and impose whatever terms or conditions the Court considers proper.

Effect of varying or cancelling an undertaking

78.13 When an undertaking is varied or cancelled, that variance or cancellation does not invalidate anything done under that undertaking prior to the variance or cancellation.

Director's Orders

Director's orders

78.2(1) If, in the opinion of the Director,

- (a) a developer is contravening or has contravened this Act or the regulations, or

- (b) a developer is using any form, agreement, letter or other document that is misleading or contains a term that misrepresents a provision of this Act or the regulations,

the Director may issue an order directed to the developer.

(2) An order may direct the developer

- (a) to stop engaging in anything that is described in the order, subject to any terms or conditions set out in the order, and
- (b) to take any measures specified in the order, within the time specified in the order, to ensure that this Act and the regulations are complied with.

(3) A developer who is subject to an order under this section may appeal under section 78.5.

(4) The Director may reconsider or vary an order issued under subsection (1).

Enforcement of Director's orders

78.21(1) If the Director is of the opinion that a person is not complying or has not complied with an order of the Director under section 78.2, the Director may apply to the Court for an order directing that person to comply with the order.

(2) The Director may not bring an application under this section

- (a) until the time for appealing the Director's order has passed without an appeal's being made, or
- (b) if an appeal has been made, until the appeal has been resolved and the Director's order either stands or has been confirmed by the appeal board.

(3) After receiving an application under subsection (1), the Court may, if it considers it necessary in the circumstances, make an interim order granting the relief that the Court considers appropriate pending the determination of the application.

(4) An interim order under subsection (3) may be made ex parte if the Court considers it appropriate in the circumstances.

(5) On hearing an application, the Court may,

(a) if it is of the opinion that there were insufficient grounds for the Director to have issued an order under section 78.2, quash the order;

(b) if it is of the opinion that the Director had sufficient grounds for issuing the order and that the person is not complying or has not complied with the Director's order, grant an order, subject to any terms and conditions the Court considers appropriate in the circumstances, doing one or more of the following:

(i) directing the person to comply with the order of the Director;

(ii) giving directions that the Court considers necessary in order to ensure that the order of the Director will be complied with;

(iii) awarding costs in respect of the matter.

Administrative Penalties

Notice of administrative penalty

78.3(1) If the Director is of the opinion that a developer has contravened this Act or the regulations, the Director may, by notice in writing served on the developer, require the developer to pay to the Crown an administrative penalty in the amount set out in the notice.

(2) Where a contravention or a failure to comply continues for more than one day, the amount set out in the notice of administrative penalty under subsection (1) may include a daily amount for each day or part of a day on which the contravention or non-compliance occurs or continues.

(3) The amount of an administrative penalty, including any daily amounts referred to in subsection (2), must not exceed \$100 000.

(4) A notice of administrative penalty shall not be served more than 4 years after the day on which the contravention or non-compliance occurred.

(5) A developer who is the subject of an administrative penalty under this section may appeal under section 78.5.

Right to make representations

78.31 Before imposing an administrative penalty in an amount of \$500 or more, the Director shall

- (a) advise the developer, in writing, of the Director's intent to impose the administrative penalty and the reasons for it, and
- (b) provide the developer with an opportunity to make written representations to the Director.

No offence where administrative penalty paid

78.32 A developer who pays an administrative penalty in respect of a contravention or a failure to comply shall not be charged under this Act with an offence in respect of the same contravention or failure to comply that is described in the notice of administrative penalty.

Enforceability of notice of administrative penalty

78.33(1) Subject to subsection (2), where a developer fails to pay an administrative penalty in accordance with the notice of administrative penalty and the regulations, the Minister may file a copy of the notice of administrative penalty with the clerk of the Court, and on being filed, the notice has the same force and effect and may be enforced as if it were a judgment of the Court.

(2) Subsection (1) does not apply where an administrative penalty has been stayed under section 78.51(4).

Court Actions by the Director

Court actions by the Director

78.4(1) In addition to any other remedy in this Act, the Director may bring and maintain an action in the Court against a developer if the Director is of the opinion that the developer

- (a) has contravened this Act or the regulations under this Act, or
 - (b) has not complied with the terms of an undertaking that the developer has entered into.
- (2) In an action brought under subsection (1), the Court may
- (a) declare that this Act or the regulations under this Act have been contravened;
 - (b) grant an order requiring the developer to provide any redress the Court considers proper to those persons who suffered damage or loss arising from the contravention of this Act or the regulations;
 - (c) grant an order in the nature of an injunction restraining the developer from engaging in the practice that gave rise to the contravention of this Act or the regulations;
 - (d) if the subject of the order is an agreement, grant an order for specific performance of the agreement or grant an order for rescission of the agreement;
 - (e) grant an order for the restitution of property or money;
 - (f) award punitive or exemplary damages;
 - (g) grant any other relief the Court considers proper.
- (3) Damages awarded under this section are a debt owing to the Crown in right of Alberta.

Director's claim for restitution

78.41 If the Court has granted an order under section 78.4 that provides for restitution of property or money to a person who has suffered loss arising from a contravention of this Act or the regulations, the Director may, on behalf of the person or persons, do anything necessary to enforce the order against the personal or real property of the developer who is liable to pay the restitution.

Advertisement of judicial decision

78.42(1) When the Court grants relief under section 78.4, the Court may make a further order requiring the developer to

advertise to the public particulars of any order, judgment or other relief granted by the Court.

(2) In making an order under subsection (1), the Court may specify

- (a) the methods of making the advertisement so that it will ensure prompt and reasonable communication to consumers;
- (b) the contents or form, or both, of the advertisement;
- (c) the number of times the advertisement is to be made;
- (d) any other conditions the Court considers proper.

Public record

78.43(1) The Director shall maintain a public record of undertakings, Director's orders, Court orders under section 78.21 or 78.4, administrative penalties and any other prescribed information or documents.

(2) The Director may specify the form of the public record referred to in subsection (1) and which documents must or may be included.

Appeals

Appeal

78.5(1) A developer

- (a) to whom an order under section 78.2 is directed, or
- (b) on whom a notice of administrative penalty is served under section 78.3

may appeal the order or administrative penalty by serving the Minister with a notice of appeal within 30 days after being notified in writing of the order or being served with the notice of administrative penalty.

(2) A notice of appeal must contain the information and be made in the manner provided for in the *Fair Trading Act* and the regulations under that Act, with any necessary modifications.

(3) The Minister must, within 30 days after being served with a notice of appeal under subsection (1) and payment of the fee for the appeal as established by the regulations under this Act or the *Fair Trading Act*, refer the appeal to an appeal board appointed or designated in accordance with the *Fair Trading Act* and the regulations under that Act, with any necessary modifications.

(4) The Minister may set the time within which an appeal board is to hear an appeal and render a decision and may extend that time.

(5) An appeal board that hears an appeal pursuant to this section may confirm, vary or quash the order or administrative penalty that is being appealed.

(6) An appeal under this section is a new trial of the issues that resulted in the order or administrative penalty being appealed.

(7) An appeal under this section is to be conducted in accordance with the *Fair Trading Act* and the regulations under that Act, with any necessary modifications.

Effect of appeal

78.51(1) Subject to this section, an appeal under section 78.5(1)(a) does not affect the status or enforceability of the order being appealed.

(2) A developer who is appealing an order under section 78.5(1)(a) may apply to the chair of the appeal board to stay the order being appealed.

(3) On application under subsection (2) and after allowing the Director to make representations, the chair may, if the chair considers it appropriate, order a stay of the order being appealed until the appeal board renders its decision on the appeal or the appeal is withdrawn.

(4) If an appeal is commenced regarding an administrative penalty, the administrative penalty is stayed by the deposition by the developer of an irrevocable letter of credit in the amount of the administrative penalty with the President of Treasury Board and Minister of Finance within 30 days after the date on

which the notice of administrative penalty referred to in section 78.3 is served on the person.

Appeal to Court

78.52 The Director or a developer whose appeal is heard by an appeal board may appeal the decision of the appeal board by filing an application with the Court within 30 days after being notified in writing of the decision, and the Court may make any order that an appeal board may make under section 78.5(5).

48 Section 79 is repealed and the following is substituted:

Offences and Penalties

Offences and penalties

79(1) A person who

- (a) fails to comply with section 10.1(1), 12(1), 12.1, 13(2), 14(3), (4), (5), (6), (7) or (7.1), 16(2) or 21,
- (b) fails to comply with an order of the Director under section 78.2 that has not been stayed,
- (c) furnishes false information or misrepresents any fact or circumstance to an inspector or to the Director, or
- (d) fails to comply with an undertaking under this Act

is guilty of an offence.

(2) Where a body corporate is convicted of an offence, the body corporate is liable to a fine of not more than the greater of

- (a) \$100 000, and
- (b) 3 times the amount obtained by the body corporate as a result of the offence.

(3) Where an individual is convicted of an offence, the individual is liable to a fine of not more than the greater of

- (a) \$25 000, and
- (b) 3 times the amount obtained by the individual as a result of the offence.

48 Section 79 presently reads:

79(1) A person who fails to comply with section 12(1) or (5), 13, 14 or 21 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.

(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 less than \$200 nor more than \$5000.

(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 less than \$200 nor more than \$5000.

Liability of directors and officers

79.1(1) When a developer that is a corporation commits an offence under this Act or the regulations, every principal, director, officer, manager, employee or agent of the developer who authorized the act or omission that constitutes the offence or who assented to, acquiesced in or participated in the act or omission that constitutes the offence is guilty of the offence whether or not the developer has been prosecuted for the offence.

(2) When a developer that is a partnership or an owner of a sole proprietorship commits an offence under this Act or the regulations, each partner in the partnership and each manager, employee or agent of the partner or owner who authorized the act or omission that constitutes the offence or who assented to, acquiesced in or participated in the act or omission that constitutes the offence is guilty of the offence whether or not the partner or owner has been prosecuted for the offence.

Vicarious liability

79.2 For the purposes of this Act, an act or omission by an employee or agent of a developer is deemed also to be an act or omission of the developer if the act or omission occurred

- (a) in the course of the employee's employment with the developer, or
- (b) in the course of the agent's exercising powers or performing duties on behalf of the developer under their agency relationship.

Time limit for prosecution

79.3 A prosecution of an offence under this Act or the regulations shall not be commenced more than 4 years after the day on which the offence was alleged to have been committed.

Government's costs

79.4(1) The Director may require a person who is investigated under this Act and who

- (a) is the subject of an order of the Director under section 78.2, or
- (b) has entered into an undertaking

to pay the costs that the Government incurs in the investigation or that arose in the process leading up to the issuance of the order of the Director or the entering into of the undertaking.

(2) The Director must notify a person referred to in subsection (1) of the amount of the costs, and the person has 30 days from receiving the notice to file an objection with the Director respecting the amount of the costs.

(3) On receiving an objection within the 30-day time period specified in subsection (2), the Director must submit the matter to an arbitration process approved by the Minister.

(4) A person who is required to pay costs under subsection (1) is liable to pay

(a) the amount specified in the Director's notice, if no objection is filed within the 30-day time period specified in subsection (2), or

(b) the amount specified in the decision of the arbitrator,

and the Director may collect the amount by civil action for debt.

Publication of prosecution information

79.5 Subject to the regulations, the Director may publish particulars of a prosecution of an offence under this Act or the regulations.

Evidence

79.6(1) The Director may administer oaths for the purposes of this Act.

(2) The Director may, by order, summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath and to produce the documents and things the Director considers requisite to the full investigation and consideration of matters within the Director's jurisdiction in the same manner as a court of record may in civil cases.

(3) The Director

(a) may accept any oral or written evidence that the Director considers proper, whether or not it would be admissible in a court of law, and

- (b) is not bound by the law of evidence applicable to judicial proceedings.

Copies

79.7 A copy of a document made during an inspection or investigation under this Act and certified to be a true copy by the person who conducted the inspection or investigation is admissible in evidence without proof of the signature or appointment of the person who signed the certificate and, in the absence of evidence to the contrary, the copy has the same probative force as the original.

Protection from liability

79.8 No action lies against the Crown or its employees, officers, agents or delegates or a member of an appeal board under the *Fair Trading Act* hearing an appeal under this Act for anything done or omitted to be done by any of them in good faith while exercising their powers and performing their duties under this Act or the regulations.

49 Section 81 is amended

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

- (c.1) respecting the form and the manner of delivering the information and documents described in section 12;
- (c.2) respecting the preparation of a budget or proposed budget referred to in section 12(1)(l);
- (c.3) respecting the consequences of a developer delivering to a purchaser a budget or proposed budget referred to in section 12(1)(l) that contains one or more misrepresentations;
- (c.4) respecting a delay in occupancy referred to in section 13.1;
- (c.5) respecting the remedies of a purchaser under section 13.1 or 13.2;
- (c.6) respecting the manner of delivering written notice under section 13.2(3);

49 Section 81 presently reads:

81 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) with respect to anything that must be contained in or on, attached to or endorsed on a condominium plan or a plan presented for registration as a condominium plan,*
 - (i) for the purposes of section 8, prescribing any other information or feature that must be contained in a condominium plan;*
 - (ii) providing that additional pages or material attached or otherwise annexed to the condominium plan form part of the condominium plan;*
 - (iii) providing for alternate methods or an alternate manner by which a condominium plan may contain information or material or be endorsed;*

- (c.7) prescribing documents, records and other property that is the property of the corporation;
- (c.8) respecting the preparation of a building assessment report required by section 21.1, including but not limited to
 - (i) any assessments or inspections that must be completed for inclusion in the building assessment report,
 - (ii) any information that must be included in the building assessment report,
 - (iii) the form of the building assessment report,
 - (iv) the qualifications of the person preparing the building assessment report, and
 - (v) persons to whom the building assessment report must be submitted;

(b) in clause (d) by adding the following after subclause (v):

- (v.1) respecting the records to be kept respecting trust accounts, the period of time that those records are to be maintained and the audit of trust accounts;

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

- (d.1) respecting the termination of agreements;

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

- (f.1) respecting the application of sections 10.1 to 16.1 to the purchase and sale of conversion units;
- (f.2) respecting proxies;
- (f.3) respecting the notice requirements for general meetings;
- (f.4) respecting other notices required to be given with respect to a general meeting;
- (f.5) respecting the notice of the results of a vote under section 26.2;

- (iv) *respecting information or any other material to be included in a condominium plan with respect to the amendment of a condominium plan, the development in phases of units and common property or the modification of a condominium plan;*
- (d) *for the purposes of section 14,*
 - (i) *providing for and governing the requirements for and the designation of persons as cost consultants;*
 - (ii) *respecting the determination as to what common property constitutes related common property;*
 - (iii) *respecting the determination as to when a unit or related common property is substantially completed;*
 - (iv) *designating improvements or areas as related common property;*
 - (v) *respecting when a unit or related common property is substantially completed;*
 - (vi) *governing the reduction pursuant to section 14(12) of the amount of money to be held in trust;*
 - (vii) *governing the criteria to be met in order for a plan, agreement, scheme or arrangement to be approved under section 14(10);*
 - (viii) *governing when a plan, agreement, scheme or arrangement or coverage under a plan, agreement, scheme or arrangement commences to apply in respect of a unit;*
- (e) *governing amendments to condominium plans;*
- (f) *governing the modification of a condominium plan under section 20(2);*
- (g) *for the purposes of section 40, providing for the maximum rate of interest to be charged;*
- (h) *for the purposes of section 47, prescribing the perils that must be insured against;*

- (f.6) respecting the conducting of a vote by electronic means for the purpose of section 26.2(5);
- (f.7) respecting rules that may be made under section 32.1;
- (f.8) respecting monetary sanctions imposed under section 35;
- (f.9) respecting other costs that may be paid from the reserve fund;
- (f.91) respecting providing of notice, and the contents of the notice, for the purpose of section 38.1(2);
- (f.92) respecting the manner in which amounts referred to in section 39.1(5) may be dealt with;

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

- (g.1) prescribing reasonable expenses for the purpose of section 42(b);
- (g.2) prescribing the information and documents to be provided under section 44, including, without limitation, regulations respecting the time, form and manner of providing the information and documents;
- (g.3) respecting the fees a corporation may charge for producing and providing any information or documents referred to in section 44.1;

(f) by repealing clause (h) and substituting the following:

- (h) for the purposes of section 47, generally respecting the insurance obligations of a corporation and an owner, including, without limitation, regulations
 - (i) prescribing the perils that must be insured against,
 - (ii) respecting the responsibility for payment of deductibles under a policy of insurance placed by the corporation, and
 - (iii) respecting the responsibility of the corporation or an owner, or both, to make repairs or to replace property

- (i) *subject to sections 60 to 63, governing the termination of condominium status of real property;*
- (j) *subject to section 64, governing the dissolution and winding-up of a corporation;*
- (k) *providing for and governing the amalgamation of adjacent parcels;*
- (l) *governing the development of units and common property in phases under a condominium plan, including, in respect of a development in phases, the creation of additional units and common property;*
- (m) *governing the cancellation or the non-completion of a development of units and common property in phases under a condominium plan;*
- (n) *in the case of the amalgamation of adjacent parcels, the development of units and common property in phases or the cancellation or non-completion of a development of units and common property in phases, providing for and governing*
 - (i) *the assignment of or the re-apportionment of unit factors to or among the units;*
 - (ii) *the amalgamation of corporations arising out of the amalgamation of adjacent parcels;*
 - (iii) *any other matter not referred to in subclauses (i) and (ii) that is necessary or expedient so that the parcels, corporations, units and common property or any one or more of them are able to function and to be administered under this Act;*
- (o) *governing the requirements to be met by developers;*
- (p) *governing capital replacement reserve funds maintained by corporations;*
- (q) *governing the preparation and distribution of financial statements and annual budgets under section 30(3);*
- (r) *prescribing the fees to be paid for any procedure or function required or permitted to be done under this Act;*

arising from damage to a unit or the common property;

(h.1) respecting the deposit a corporation may require under section 53;

(g) in clause (p) by striking out “capital replacement”;

(h) in clause (q) by striking out “30(3)” and substituting “30(4)”;

(i) by adding the following after clause (s):

(s.1) respecting the skills, education, competencies and experience of condominium managers;

(j) in clause (t) by striking out “managers of corporations” and substituting “condominium managers”;

(k) in clause (u.1) by striking out “43(1)” and substituting “43”;

(l) by adding the following after clause (u.1):

(u.2) prescribing the form and contents of notices of administrative penalties and the manner in which the notices are required to be given;

(u.3) prescribing contraventions in respect of which an administrative penalty may be imposed and prescribing the amounts, or the manner of determining the amounts, of the administrative penalties that may be imposed under section 78.3;

(u.4) respecting any other matter necessary for the administration of the system of administrative penalties;

(u.5) respecting fees for filing appeals;

(u.6) respecting any matter necessary for the administration of appeals;

(u.7) providing with respect to any provision of the regulations that its contravention constitutes an offence;

- (s) respecting the practice and procedure governing application to the Court under this Act;*
- (t) 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 mediation, conciliation, arbitration or similar techniques to encourage settlement of disputes arising in respect of units, common property, management of units, of common property or of 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;**
- (u) authorizing the Minister to delegate to an association or organization referred to in clause (t) the carrying out of any function or duty under this Act;*
- (u.1) respecting the investment of money for the purpose of section 43(1);*
- (v) 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.*

- (u.8) prescribing penalties in respect of offences created under clause (u.7);
- (u.9) governing the publication of particulars of a prosecution for the purpose of section 79.5, including, without limitation, the information that may be published and the times at which and the manner in which it may be published;
- (u.91) respecting non-residential units, including, without limitation, regulations modifying or exempting the application of provisions of this Act or the regulations to non-residential units;
- (u.92) defining any word or expression that is used but not defined in this Act;

50 Appendix 1 is amended

- (a) by repealing section 1(4);**
- (b) by repealing section 3(b);**
- (c) in section 7(2) by striking out “first general”;**
- (d) in section 7(3)(a) by striking out “under section 9 of these bylaws”;**
- (e) by repealing the heading preceding section 8 and section 8;**
- (f) by repealing the heading preceding section 9 and section 9;**
- (g) in section 10 by striking out “under section 9 of these bylaws”;**
- (h) by repealing the heading preceding section 19 and section 19;**
- (i) by repealing the heading preceding section 20 and section 20;**
- (j) by repealing sections 23, 24, 26, 27, 28, 31 and 32 and the headings preceding those sections.**

50 Consequential amendments to Appendix 1.

Transitional regulations

51 The Lieutenant Governor in Council may make regulations providing for the transitional application of the amendments to the *Condominium Property Act* made by this Act.

52 Sections 26(7)(b) and 28.1(1)(c) are amended by adding “or the Tribunal” after “a court”.

Amends RSA 2000 cR-5

53(1) The *Real Estate Act* is amended by this section.

(2) Section 1(1) is amended

(a) by repealing clause (d) and substituting the following:

(d) “business of an industry member” means the trades of a real estate broker, the activities of a real estate appraiser referred to in clause (u.1), the dealings of a mortgage broker or the activities of a condominium manager undertaken by an industry member;

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

(e.1) “condominium corporation” means a corporation as defined in the *Condominium Property Act*;

(e.2) “condominium board” means a board as defined in the *Condominium Property Act*;

(e.3) “condominium management service” means the exercising of a power or the performing of a duty of a condominium corporation on behalf of the condominium corporation, including but not limited to

(i) collecting, holding or disbursing amounts levied by the condominium corporation,

(ii) preparing financial documents on behalf of the condominium corporation,

(iii) enforcing the bylaws or rules of the corporation, and

51 Transitional regulations.

52 Consequential amendments.

53(1) Amends chapter R-5 of the Revised Statutes of Alberta 2000.

(2) Section 1 presently reads in part:

1(1) In this Act,

(d) “business of an industry member” means the trades of a real estate broker, the activities of a real estate appraiser referred to in clause (u.1) or the dealings of a mortgage broker undertaken by an industry member;

(e) “bylaws” means, except in section 67, bylaws made by the Council;

(n) “industry” means the real estate broker industry, the real estate appraiser industry and the mortgage broker industry;

(o) “industry member” means any person who holds an authorization as a real estate broker, a real estate appraiser or a mortgage broker, or as any category or class of real estate broker, real estate appraiser or mortgage broker, issued by the Council;

(s.1) “property management” includes any of the following:

(i) leasing or offering to lease real estate or negotiating or approving, or offering to negotiate or approve, a lease or rental of real estate;

(ii) holding money received in connection with an activity referred to in subclause (i);

(iii) advertising, negotiating or carrying out any other activity, directly or indirectly, for the purpose of furthering an activity referred to in subclause (i) or (ii);

- (iv) negotiating or entering into contracts on behalf of the condominium corporation,

but does not include any activity excluded by the regulations;

(e.4) “condominium manager” means

- (i) a person who, for consideration or other compensation, either alone or through one or more persons, provides a condominium management service to a condominium corporation, or
- (ii) a person who holds out that the person is a person referred to in subclause (i);

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

- (n) “industry” means the real estate broker industry, the real estate appraiser industry, the mortgage broker industry and the condominium manager industry;

(d) by repealing clause (o) and substituting the following:

- (o) “industry member” means any person who holds an authorization as a real estate broker, a real estate appraiser, a mortgage broker or a condominium manager, or as any category or class of real estate broker, real estate appraiser, mortgage broker or condominium manager, issued by the Council;

(e) by repealing clause (s.1) and substituting the following:

- (s.1) “property management” includes any of the following:
 - (i) leasing or offering to lease real estate or negotiating or approving, or offering to negotiate or approve, a lease or rental of real estate;
 - (ii) holding money received in connection with an activity referred to in subclause (i);
 - (ii.1) collecting, or offering or attempting to collect, on behalf of the owner or other person in charge of real

- (x) “trade” includes any of the following:
- (i) a disposition or acquisition of, or transaction in, real estate by purchase or sale;
 - (ii) an offer to purchase or sell real estate;
 - (iii) an offering, advertisement, listing or showing of real estate for purchase or sale;
 - (iv) property management;
 - (v) holding oneself out as trading in real estate;
 - (vi) the solicitation, negotiation or obtaining of a contract, agreement or any arrangement for an activity referred to in subclauses (i) to (v);
 - (vii) collecting, or offering or attempting to collect, on behalf of the owner or other person in charge of real estate, money payable as
 - (A) rent for the use of the real estate, or
 - (B) contributions for the control, management or administration of the real estate;
 - (viii) any conduct or act in furtherance or attempted furtherance of an activity referred to in subclauses (i) to (vii).

estate, money payable as rent for the use of real estate;

- (iii) advertising, negotiating or carrying out any other activity, directly or indirectly, for the purpose of furthering an activity referred to in subclauses (i) to (ii.1);

(f) in clause (x)

- (i) by repealing subclause (vii);**

- (ii) in subclause (viii) by striking out “(vii)” and substituting “(vi)”.**

(3) Section 2 is amended

- (a) by repealing subsection (1)(c.1);**

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

(6) This Act, as it relates to carrying out a condominium manager service, does not apply to a condominium corporation in respect of managing its own affairs.

(4) Section 12 is amended

- (a) by repealing clause (a) and substituting the following:**

- (a) prescribing or adopting standards of conduct and business standards for industry members, including skills, education, competencies and experience;

- (b) by repealing clause (j.1) and substituting the following:**

- (j.1) regulating the business of an industry member on the industry member’s own behalf;

(5) Section 17 is amended

- (a) by striking out “or” at the end of clause (c) and adding the following after clause (c):**

- (c.1) act as a condominium manager, or

(3) Section 2 presently reads in part:

2(1) This Act as it relates to trading in real estate does not apply to

(c.1) a condominium corporation in respect of managing its own affairs

(4) Section 12 presently reads in part:

12 The Council may make rules

(a) prescribing or adopting standards of conduct and business standards for industry members;

(j.1) regulating trading in real estate by an industry member on the industry member's own behalf;

(5) Section 17 presently reads:

17 No person shall

(a) trade in real estate as a real estate broker,

(b) deal as a mortgage broker,

(b) in clause (d) by adding “, condominium manager” after “real estate broker”.

(6) Section 22 is amended by adding the following after clause (d):

(e) in the case of a condominium management service, the person sought to be charged has as a result of the services of the condominium manager employed by that person for the purpose received the services of a condominium manager.

- (c) *act as a real estate appraiser, or*
- (d) *advertise himself or herself as, or in any way hold himself or herself out as, a mortgage broker, real estate broker or real estate appraiser*

unless that person holds the appropriate authorization for that purpose issued by the Council.

(6) Section 22 presently reads:

22 No action shall be brought to charge a person by commission or otherwise for services rendered in connection with a transaction in the business of an industry member unless

- (a) *the service agreement on which recovery is sought in the action or some note or memorandum of it is in writing signed by the party to be charged or by that person's agent lawfully authorized in writing,*
- (b) *in the case of a trade in real estate, the person sought to be charged*
 - (i) *has as a result of the services of a real estate broker employed by that person for the purpose effected a sale or lease of land or an interest in it, and*
 - (ii) *has either executed a transfer or lease signed by all other necessary parties and delivered it to the buyer or lessee, or has executed an agreement of sale of land, or an interest in it, signed by all necessary parties, entitling the buyer to possession of the land or any interest in it, as specified in the agreement, and has delivered the agreement to the buyer,*
- (c) *in the case of a mortgage transaction, the person sought to be charged has as a result of the services of a mortgage broker employed by that person for the purpose obtained a mortgage loan or loaned funds secured by a mortgage, or*
- (d) *in the case of a transaction involving the activities of a real estate appraiser described in section 1(1)(u.1), the person sought to be charged has as a result of the services of a real estate appraiser employed by that person for the purpose*

(7) Section 25 is amended

(a) in subsection (1)

(i) in clause (a) by striking out “in respect of a dealing or trade for that person,” **and substituting** “in respect of a dealing, trade or activity for that person,”;

(ii) in clause (b)

(A) by striking out “of a dealing or trade” **and substituting** “of a dealing, trade or condominium management service”;

(B) by striking out “the dealing or trade” **and substituting** “the dealing, trade or condominium manager service”;

(iii) in clause (c) by striking out “of a dealing or trade” **and substituting** “of a dealing, trade or condominium management service”;

(iv) in clause (d) by striking out “of a dealing or trade” **and substituting** “of a dealing, trade or condominium management service”;

(b) in subsection (2) by striking out “of a dealing or trade” **and substituting** “of a dealing, trade or condominium management service”.

received an estimate of the value of an identified interest in real estate.

(7) Section 25 presently reads in part:

25(1) An industry member who is required by the rules to keep and operate a trust account shall

- (a) keep complete and accurate financial records in which the industry member shall maintain a separate record for each person on whose behalf the industry member is acting of all
 - (i) money received in trust,*
 - (ii) money held in trust,*
 - (iii) interest earned on money held in trust, and*
 - (iv) disbursements made from money received or held in trust, in respect of a dealing or trade for that person,**
- (b) deposit money received in trust in respect of a dealing or trade in the business of the industry member within the time prescribed by the regulations, or within any period agreed to in writing by the parties to the dealing or trade, in an interest-bearing account that is
 - (i) maintained in a bank, loan corporation, trust corporation, credit union or treasury branch, and*
 - (ii) kept in the name of the industry member and designated as a trust account,**
- (c) keep money received or held in trust in respect of a dealing or trade in the business of the industry member separate from money that belongs to the industry member or any industry members the industry member employs, and*
- (d) disburse money received or held in trust in respect of a dealing or trade in the business of the industry member only in accordance with the rules and with the terms of the trust governing the use of that money.*

(2) Where an industry member receives money in trust in respect of a dealing or trade in the business of the industry member, the

54 This Act comes into force on Proclamation.

industry member shall ensure that the terms of the trust governing the use of the money are in writing and agreed to by the industry member and all other parties.

54 Coming into force.

