



The Top 10 Changes to the *Condominium Property Act*

Presentation for Condominium Owners and Board Members
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Introduction

- October 11, 2017
 - An Order in Council to proclaim certain amendments to the *Condominium Property Amendment Act*
 - An Order in Council to proclaim certain Regulations
 - Plain Language: Developer and certain Board governance amendments are in force for January 1, 2018 or April 1, 2018

The Top 10 Changes Affecting Owners

- We will go through 10 changes we think you should be aware of
- We will discuss how these changes will affect Owners
- We will discuss impacts and solutions
 - Note some solutions will evolve over time

1. Higher Threshold for Board Members

- Section 28 amendment
- Board members will be held to a higher standard:
 - (CURRENT) Must act honestly and in good faith with a view to the best interests of the corporation; and
 - (NEW) Must exercise the care, diligence and skill that a ***reasonably prudent person*** would exercise in comparable circumstances
- What does this mean for Owners?
- What does this mean for Managers?

1. Higher Threshold for Board Members

- Board members ought to reasonably pursue investigations and solutions
- Provide Owners with more tools to encourage Boards to complete investigations
- Example: Has an expert opinion been provided?
- What about silent, non-participating Board members?

2. Annual General Meetings

- (NEW) Sets out a minimum notice period before Corporation meetings such as the AGM (s. 30)
- At least 14 days notice must be provided prior to the AGM
- In addition to 14 days' notice, Corporations must also provide certain documents to Owners at least 14 days in advance:
 - Financial statements according to generally accepted accounting principles (Audit, Review Engagement)
 - Reserve fund report for the past year
 - Budget

3. Special Meetings After a Petition

- (NEW) Section 30.1
- Legislation compels the Corporation to call a meeting if 1,500 unit factors sign a written request to do so
- The request must include the nature of the business to be dealt with
- The Board has 30 days to call the meeting, but must also give 14 days' notice of the meeting

3. Special Meetings After a Petition

- Notice must give the proposed wording to be voted on
- Note: Petitioners must give enough detail in petition for the Board to draft the resolution when sending out the notice
- Practical Consideration: Petitioners must give enough detail in petition for Board to work resolution when sending out notice
- As a result, it is suggested that the Petition should include the wording of the resolution to be voted upon

3. Special Meetings After a Petition

- Example: The undersigned petitioners are dissatisfied with the management of the Corporation and demand a meeting to discuss the situation regarding the roof
- Q: What is the resolution to be voted on?
- A: Is it:
 - To change from cedar to asphalt shingles?
 - To replace the roof rather than repair it?
 - To change the colour of the roof?
 - To fire the Board?
 - To fire the condominium manager?
 - Others?

4. Service By Email

- (NEW) Section 71.1 now allows service of documents to owners by electronic means
- Owners will have to opt into service by email
- See **Willis Law** website for form (www.willislaw.ca)
- Question: What controls will be put in place to prove notice was sent out?

5. Venue of Meeting

- Meetings must be held in the municipality in which units are located unless an ordinary resolution is passed
- This now applies to Board meetings as well as Corporation meetings
- Board members may participate electronically
- Question: Will this affect board meetings hosted at your office?
- Question: If so, should this be added to your next AGM as New Business?

6. Notice of Insurance Changes

- A corporation is required to provide each owner with written notice of the change and a copy of the insurance certificate within 30 days from when the Corporation receives the insurance certificate
- Specifically, a change in:
 - Amount of the deductible
 - Replacement value of the coverage
 - Any addition to permitted exclusions
 - Anything else in the Regulations

6. Notice of Insurance Changes

- Question: Who will be responsible for sending the information out to Owners?
- Question: What would the impact be of not providing notice?
- Question: What controls are in place to demonstrate the mailout occurred?

7. Corporation to Own Visitor and Handicapped Parking Stalls

- For new developments, Visitor and Handicapped Parking Stalls will be owned by the Corporation
 - Section 20 is amended to require title to Visitor and Handicapped parking to be transferred to the Corporation when a condominium plan is re-divided
 - This would apply to future re-division of bareland condominium developments

8. Creation of Exclusive Use Areas by Bylaw

- A practical change
- Previously, this required a condominium plan amendment under s. 71 of the Regulations. This would normally include:
 - Special resolution
 - Statement from an engineer, architect or surveyor
 - Court Order
- Now a Corporation can assign exclusive use areas through their Bylaws
- Q: How will Land Titles respond?

9. Documents to be Provided by Developer to Elected Board

- Section 20.2 of Regulations
- The Developer or Interim Board must provide certain documents to the Elected Board (upon turnover)
 - Documents, plans and orders under the *Safety Codes Act*
 - Copies of all manuals, schematic drawings, operating instructions
 - Records of service and repair when interim board was in control
 - List of each owner, unit numbers
 - Areas of exclusive use

9. Documents to be Provided by Developer to Elected Board

- Section 20.2 of Regulations (continued)
 - Municipal address, address on title, additional address for owner if one has been provided, unit factors
 - List of mortgagees who have given written notice to Corporation
 - List of Tenants interim board has been informed of
 - Any rules made by the Board
 - Copy of any legal or professional advice (accounting, engineering, etc.) paid for by the Corporation

9. Documents to be Provided by Developer to Elected Board

- Section 20.2 of Regulations (continued)
 - Banking records
 - Restrictive covenants
 - Insurance policies
 - Caveats against units owned by the Corporation or intended to be transferred to the Corporation
 - Amongst others
- Question: What items would the initial manager be expected to keep? Will there be an attempt to shift the burden?

10. Developer's Estimated Budget

- Regulations 20.4
- A developer must present a proposed budget for Owners
- Once fees are actually assessed, there are consequences if the expenses are more than 15% above the proposed budget
- Corporation shall present the Developer with:
 - Notice that there was a deviation, and
 - A copy of financial statements showing how the deviation occurred

10. Developer's Estimated Budget

- Developer required to pay the difference over the 15%
- Subject to certain exclusions, such as:
 - Additional costs incurred because Corporation terminated an agreement and entered into a new agreement
 - An expense that was not reasonably foreseeable
 - An increase in an insurance premium or insurance deductible
 - Increase in market rate of utility charges
 - Legal fees incurred after turnover (i.e. Developer does not have to pay for the Corporation's lawyer to sue the Developer...)



11. Removal of Ability to Caveat for Chargebacks in Exclusive Use Areas

- Very important change!
- Very little consultation on this point in our opinion
- Section 50(5) deals with Exclusive Use Areas

11. Removal of Ability to Caveat for Chargebacks in Exclusive Use Areas

- When dealing with Exclusive Use Areas, a corporation is no longer permitted to chargeback “any reasonable cost” it has incurred as if it were a condo fee
 - For maintenance and repair where an owner failed to maintain or repair the area
 - In accordance with the regulations, or
 - If required by a municipality

11. Removal of Ability to Caveat for Chargebacks in Exclusive Use Areas

- Example: Deck or patio not maintained: pet poop, broken railing
- Now required to chase owner through small claims or (potentially) the tribunal
- Compliant owners are now more financially at risk for non-compliant owners

11. Removal of Ability to Caveat for Chargebacks in Exclusive Use Areas

- Plain Language: Corporations will no longer be able to assess these expenses as if they were a condo fee against the unit which caused the damage.
- Who does this benefit?
- What is likelihood smaller costs will be written off?
- Who will compliant owners blame?

Summary

- There are items which will affect current Boards, regardless of when the developer turned over
- Substantial amount of developer related changes
- You can download a new, updated version of the *Condominium Property Act* on the Queen's Printer website
- Please familiarize yourself with the changes
- Encourage your Boards and Owners to do so as well

The Willis Law Lawyers

- **Hugh Willis** – Bylaws, Catastrophic Loss, Contested AGMs
 - *hwillis@willislaw.ca*
- **Natasha Sutherland** – Collection of Arrears, Collection of Chargebacks, Construction Litigation, Insurance Litigation, Chargebacks, Contract Review
 - *nsutherland@willislaw.ca*
- **Melissa L. Stappler** – Arbitration, Mediation, General Condo Opinions, Problem Owners, Bylaw Enforcement, Insurance, Construction
 - *mstappler@willislaw.ca*