

# CONDO CARD

## 3-STEP CONDOMINIUM BY-LAWS

Condominium by-laws deal with a variety of issues, such as: Licensing, leasing or granting easements over the common elements; borrowing money; the assessment and collection of common expense contributions; qualifications for directors and their manner of election; compensation for directors; duties of officers; mediation procedures; maintenance standards; and so forth. The list is not endless, but it is long. And it is very important that the by-laws be created, approved and enacted in accordance with the provisions of law.

1

### Board Approval

It is the responsibility of the condominium board of directors to consider and approve by-laws to be proposed to the unit owners. This must be done by resolution at a duly called meeting of the board. Usually legal counsel is sought to draft the by-law, or at least to help the board ensure that the by-law is accurate and complies with applicable laws.

2

### Unit Owners' Approval

Unit owners are to be given the opportunity to review and vote on the by-law at a meeting of owners called for that purpose. A copy of the proposed by-law must be included with the notice of meeting. Changes to the by-law can be made at the meeting. The by-law (as amended at the meeting) is passed if approved by the owners of a majority of the units.

3

### Certification & Registration

Once the by-law has been approved by the unit owners, the directors are to execute a form (Form 11 under Ontario Regulation 48/99) certifying that all requirements of the *Condominium Act, 1998* were complied with in respect of the making of the by-law. This is delivered to legal counsel along with the approved form of by-law for registration. ***The by-law is not in effect until it is properly registered against title to all of the units.***

Note that condominium by-laws must:

1. Be enacted and approved in accordance with the *Condominium Act, 1998*;
2. Be consistent with the *Condominium Act, 1998* and the condominium's declaration; and
3. Be reasonable.

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## WHAT TYPE OF CONDOMINIUM IS YOURS?

### FREEHOLD

Contrary to popular misconceptions, the word “freehold” when applied to condominiums does *not* refer to condos with units that include the surrounding yard areas. Real estate marketers use the term that way, but it is inaccurate. Under the *Condominium Act, 1998*, a “freehold” condominium is *every type* of condominium that is not “leasehold”. There are 4 types of “freehold” condominium in Ontario. Short descriptions of each are set out below.

### LEASEHOLD

A “leasehold” condominium is a condominium that is built on leased lands. The developer is not the owner of the lands, but has a lease that permits the condominium to be built. All the developer can “sell” is the right to lease the land. The condominium corporation is therefore a tenant, and rental payments to the actual owner of the lands are included in the common expense contributions paid by the “unit owners” of the condominium.

#### STANDARD

Whether high-rise or town-home, this is the traditional style of condominium, with units and common elements. Units can have “traditional” (i.e., inside of drywall) boundaries, or might include exterior components of the building and/or lands (i.e., “whole lot” or “lot line” boundaries).

#### PHASED

A phased condominium is a standard condominium that is built and registered in stages. It is a single complex that keeps growing as additional units and common elements are added to it. It may take up to 10 years to be fully registered.

#### VACANT LAND

A vacant land condominium is like a regular plan of subdivision: most units are created as empty lots with homes or other structures to be built on them after the condominium is registered. Not every unit needs to be vacant.

#### COMMON ELEMENTS

This type of condominium has no units. It consists solely of common elements. Rights and obligations toward the common elements are “tied” to other parcels of land that exist outside of the condominium. The owners of those “Parcels of Tied Land” pay the common expenses and own the common interest.

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## WHAT TO DO WHEN DAMAGE OCCURS

Has the damage occurred to a part of a unit or to a part of the common elements?

### Unit

### Common Elements

Standard Unit\*

Improvement\*

Regular

Exclusive Use\*\*

### WHO REPAIRS IT?

#### Check the declaration

Under the *Act* the condominium corporation repairs the unit after damage. However, the declaration might allocate this duty to the unit owner.

The unit owner is always responsible for the repair of unit improvements after damage.

The condominium corporation is always responsible for the repair of regular common elements after damage. This obligation cannot be passed on to the unit owners, regardless of what the declaration might say.

#### Check the declaration

Under the *Act*, the condominium corporation repairs the exclusive use common elements after damage. However, the declaration might allocate this duty to the unit owner.

### WHO INSURES IT?

The condominium corporation insures the Standard Unit.

The unit owner insures the unit improvements.

The condominium corporation insures all of the common elements.

#### \*The Standard Unit and Unit Improvements

Unit improvements are defined by reference to a "standard unit" definition for the specific condominium. (This is not the same as the description of *unit boundaries*.) Anything not defined as "standard" is an improvement, whether or not it is an addition to or part of the original construction. If there is no definition, the entire unit is standard.

#### \*\*What are Exclusive Use common elements?

To be designated an "exclusive use" common element, the area or object must be identified in Schedule F of the declaration and shown as such on the description plans. The fact that a part of the common elements is used only by occupants of a particular unit (such as a balcony) does not in and of itself make it an "exclusive use" area.

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## ABOUT THE DECLARATION & DESCRIPTION

**WHAT ARE THEY?** The declaration and description are, after the *Condominium Act, 1998*, the most important governing – even constitutional – documents of your corporation.

The **Declaration** is a written document that establishes the condominium corporation's most fundamental rules. It sets out (for example) exclusive use common elements (if any), the percentage of the common interest each owner owns, and the percentage of the common expenses each pays. It also addresses maintenance, repair, insurance and several other obligations of the unit owners and the corporation.

The **Description** is a specific set of survey drawings that describe the perimeter boundaries of the condominium, and show which parts of the property are 'units' and which parts are 'common elements'. If there are areas of the common elements designated for exclusive use, it will show where they are. Although the description might include architectural or structural drawings, it is not the same as service drawings, site plans or other drawings and survey documents.

**CAN THEY BE CHANGED?** Yes, but only in one of three ways:

**Section 107** of the *Condominium Act, 1998*, permits amendments of the declaration or description by consent of 80%-90% of the owners, depending on the nature of the change. Municipal approval is required to amend the description.

**Section 109** of the *Condominium Act, 1998*, allows the Ontario Superior Court of Justice to amend either document where there is an error or inconsistency in the documents or that arises in seeking to carry out their "intent and purpose."

**Section 110** of the *Condominium Act, 1998*, authorizes the Director of Land Titles, on application by any interested person, to amend either document where there is an error or inconsistency that is "apparent on the face" of the document in question.

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## SOME KEY STAGES IN THE ORGANIZATION & TURNOVER OF NEW CONDOMINIUMS

ORGANIZATION

**FIRST BOARD OF DIRECTORS:** The declarant is required to appoint the first board of directors of the condominium corporation within 10 days of declaration registration.

**AUDITOR AND OTHER MATTERS:** The first board is to appoint an auditor and may enact resolutions in writing to effect matters set out in the declarant's disclosure.

**BANK ACCOUNTS AND INSURANCE:** The first board is to ensure the new corporation has at least two bank accounts (operating and reserve fund, respectively) and is insured in accordance with the *Condominium Act, 1998*.

**RUN IT LIKE A CONDO:** As first owner of the units, the declarant is responsible to pay common expenses which need to be deposited to the appropriate accounts. All other usual obligations for maintenance, repair, etc., should be performed.

TURNOVER

**ELECTION OF DIRECTORS:** 90 days after the first unit is sold or 30 days after 20% of the units are sold (whichever is later), if the declarant still owns a majority of the units, the unit owners are to elect 2 additional members to the first board.

**TURNOVER MEETING:** Within 21 days of the date on which the declarant no longer owns a majority of the units, the first board must call a Turnover Meeting, which is to be held within 21 days of the date on which it is called. At that meeting:



*An entirely new board of directors is to be elected by the unit owners; and*



*A variety of documents, including the corporate seal and minute book, are to be turned over to the newly elected board.*

**POST TURNOVER MEETING REQUIREMENTS:** Within 30 days of the Turnover Meeting, several more documents, including as-built plans and all warranties relating to the property, Tarion Warranty documentation (if any), and the standard unit definition, are to be delivered by the declarant to the new board.

Within 60 days of the Turnover Meeting, the declarant must deliver audited financial statements covering the period from declaration registration to the end of the month when Turnover occurred.

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## 3-STEP CONDOMINIUM RULES

Condominium rules must:

1. Be Reasonable;
2. Be Consistent with the *Condominium Act, 1998*, and the declaration and by-laws of the condominium; and
3. Either:
  - a. promote the safety, security or welfare of the owners and of the property and assets of the corporation; or
  - b. prevent unreasonable interference with the use and enjoyment of the common elements, the units or the assets of the corporation.

1

### Board Approval

It is the responsibility of the condominium board of directors to consider and approve rules to be proposed to the unit owners. This must be done by resolution at a duly called meeting of the board. The resolution should specify when the rule is proposed to be in effect. Often legal counsel is sought to draft the rule, or at least to help the board ensure that the rule is accurate and complies with applicable laws.

2

### Notice to Unit Owners

Once approved by the board, notice of the new rule must be sent to all unit owners. The notice must include: the proposed rule; a statement of the proposed effective date of the rule and related provisions of the Act; and a statement explaining the owners' right to requisition a meeting to vote on the rule. However, if the rule is substantially the same as one amended or repealed within the previous two years, an owners' meeting *must* be called.

3

### Rule Comes Into Effect

Unless a meeting is required by law or requisitioned by unit owners (within 30 days of receiving the notice), the rule will come into effect on the day specified in the notice – which cannot be less than 30 days after the notice was sent. If an owners' meeting is required or requisitioned, then the rule will only come into effect if and when it is approved by a majority of the owners present (in person or by proxy) at the meeting.

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## 6-STEP COMPLIANCE WITH SECTION 98

**STEP 1:** Prior to making any change to the common elements, the Unit Owner requests permission from the condominium board of directors.

**STEP 2:** The board reviews the proposed change, requesting such information, plans, specifications, etc., as it deems advisable to make a decision.

**STEP 3:** If the change is to a designated “exclusive use” common element, the board determines if the criteria set out in s. 98(2) are satisfied.

**STEP 4:** The board informs the unit owner of its decision. If approving the change, the board clearly sets out all conditions of approval.

**STEP 5:** The board ensures the requirements of s. 98(1)(c) are met, which may require a meeting of and/or notice to unit owners seeking approval.

**STEP 6:** If the change is approved, the owner and the corporation enter into an agreement under s. 98(1)(b), which is registered on title to the unit.

The failure to follow any of these steps could render a unit owners' change to the common elements illegal, even if that change is minor, and even if it is made to a portion of the common elements that is designated for the exclusive use of the occupants of that owner's unit. Also note that all costs arising from a failure to comply with a registered agreement under section 98 may be added to the common expenses for the unit and, if unpaid by the unit owner, would therefore become subject of a condominium lien pursuant to section 85 of the Act.

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## CONDOMINIUM LIENS

**WHAT:** A condominium lien is a legal interest or right of the condominium corporation in a unit of the condominium, enabling the corporation to be paid from the proceeds of sale of the unit (before most other creditors) to cover common expense debts owing to the corporation, the interest thereon, and reasonable costs of collection or attempted collection.

**WHEN:** The lien arises the very same moment that the default of payment occurs. The lien survives for three months. If the corporation fails to register a Certificate of Lien within three months of the date the debt occurred, the lien expires. The owner will still owe the common expenses, but the condominium corporation's lien rights and powers disappear. This could cost the condo additional \$\$\$.

**HOW:** A Notice of Lien must be sent to the unit owner to inform them of the proposed action of the condominium corporation. The Notice must be sent to the owner's Address for Service (in the section 47(2) record of the corporation) or served personally. The Certificate of Lien can be registered on title no sooner than 10 days after the Notice is sent. Legal assistance is strongly recommended.

**WHY:** Owners are obligated to pay common expenses without any excuse for default. The courts have stated that common expenses are the "life blood" of the condominium. Most condominiums have no other sources of income.

**Without effective lien rights and enforcement, every unit owner ends up bearing the costs of any one unit owner's failure to pay.**