



# About Condo

## TERRY'S NOTES\* NO. 1

### CONDOMINIUM BY-LAWS AND RULES

An Ontario condominium corporation is governed by the *Condominium Act, 1998* (the "Act") and by the particular declaration, description, by-laws and rules of that corporation.

By-laws are primarily administrative documents and tend to deal with matters of corporate governance and management. Rules provide guidance for day-to-day living in the condominium and therefore tend to address how the units and common elements are to be used by the owners and residents for their safety and enjoyment.

Both the by-laws and the rules must be reasonable and consistent with the declaration and the Act. If any provision in a by-law or rule is inconsistent with the provisions of the Act, the provisions of the Act prevail and the by-law or rule, as the case may be, is deemed to be amended accordingly. The rules must also be consistent with the by-laws.

#### BY-LAWS

##### *Types and Authority*

The authority to make condominium by-laws is set out in section 56(1) of the Act, along with a list of the primary types of by-law that can be made, as follows:

*The board may, by resolution, make, amend, or repeal by-laws, not contrary to this Act or the declaration,*

- (a) to govern the number, qualification, nomination, election, resignation, removal, term of office and remuneration of the directors, subject to subsection (2);*
- (b) to regulate board meetings, the form of board meetings, the quorum and functions of the board;*

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\*Terry's Notes is a series of *About Condo* memoranda adapted from study notes prepared by Terry Audette, a law clerk at Clifton Kok LLP. These notes are intended as introductory memoranda for use by persons with little or no experience in condominium law. This memorandum may include summaries and restatements of material published elsewhere, as well as simple restatements of and selections from the *Condominium Act, 1998* and related legislation.

- (c) to provide that the quorum for the transaction of business at a meeting of owners is those owners who own 33 1/3 per cent of the units of the corporation, subject to subsection 50(2);
- (d) to govern the appointment, remuneration, functions, duties, resignation and removal of agents, officers and employees of the corporation and the security, if any, to be given by them to it;
- (e) subject to subsection (3), to authorize the borrowing of money to carry out the objects and duties of the corporation;
- (f) to authorize the corporation to object to assessments under the Assessment Act on behalf of owners if it gives notice of the objections to the owners, and to authorize the defraying of costs of objections out of the common expenses;
- (g) to govern the assessment and collection of contributions to the common expenses;
- (h) to establish what constitutes a standard unit for each class of unit specified in the by-law for the purpose of determining the responsibility for repairing improvements after damage and insuring them;
- (i) to extend the circumstances described in subsection 105(2) under which an amount shall be added to the common expenses payable for an owner's unit for the purposes of subsection 105(3);
- (j) to govern the maintenance of the units and common elements;
- (k) to restrict the use and enjoyment that persons other than occupants of the units may make of the common elements and assets of the corporation, subject to any agreement made by the corporation with respect to the use and enjoyment of its common elements and assets that it shares with another person;
- (l) to govern the management of the property;
- (m) to govern the use and management of the assets of the corporation;
- (n) To specify duties of the corporation in addition to the duties set out in this Act and the declaration;
- (o) To establish the procedure with respect to the mediation of disputes or disagreements between the corporation and the owners for the purpose of section 125 or 132; or
- (p) To govern the conduct generally of the affairs of the corporation.

In addition, there are other places in the Act that authorize or require by-laws to be made in order for certain things to be done, such as:

- establishing occupancy standards (section 57),
- approving leases or easements affecting the common elements (section 21), and

- borrowing money for expenditures that are not included in the budget of the corporation (subsection 56(3)).

There are also sections of the Act that specify limits on certain by-laws. For example, subsection 56(2) states that a by-law providing for the remuneration of directors must fix the amount to be paid and the period for such payment cannot be longer than three years. Section 57, which permits an occupancy standards by-law, specifies the limits on the standards that can be imposed by that by-law.

### **Joint By-laws**

In addition to the options listed above, section 59 of the Act allows condominium corporations that share facilities or services to create joint by-laws dealing with the management of those facilities or services. The owners of the majority of the units in each of the corporations must approve these by-laws and any changes to them. In that way, each corporation is assured that the other(s) cannot change or impose such by-laws independently.

### **When By-laws Come Into Effect**

Condominium by-laws (except for those that are proposed by the declarant of the condominium\*) only come into effect when they have been:

1. approved by the owners of a majority of the units, as represented by a vote taken at a meeting duly called for that purpose<sup>§</sup>; and
2. the by-law has been registered against title to all of the units along with a Form 11 Certificate executed by the directors of the corporation.

If the by-law is a joint by-law, then it must be approved by the owners of a majority of the units in each participating condominium corporation and registered on title to all of the units in each of the corporations. This can be done at a joint meeting of the corporations.

It is not enough just to approve the by-law by vote, or simply to register it on title. Both steps must be fulfilled for the by-law to come into effect.

A vote approving (or rejecting) a by-law must be made by the owners of a majority of the units – not simply the majority of owners who attend the meeting where the vote is taken. This means that if there are not enough owners attending the meeting to

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\* A by-law proposed by the declarant of the condominium *before the registration of a declaration and description* (i.e., as part of the declarant's Disclosure Package) shall be effective – even though not registered or voted upon – from the time the declaration and description are registered and until the by-law is either repealed or replaced by the owners of the corporation.

§ The phrase “duly called for that purpose” means (1) that the meeting must be properly called in accordance with the requirements of the Act relating to calling meetings, and (2) that the stated purposes of the meeting in the notice of meeting and its agenda include the approval of the by-law. It does not mean that the meeting must only be about the by-law. The by-law must simply be one of the stated purposes of the meeting that is properly called.

represent ownership of a majority of the units, a proposed by-law will not be able to be passed.

With respect to registration of the by-law, the Form 11 Certificate is essential. Form 11 is found in Ontario Regulation 48/01. Section 38 of that regulation states that:

*A land registrar shall not receive the certified copy of a by-law mentioned in subsection 56(9) of the Act for registration unless the certificate of the officer of the corporation is in the required form and states that,*

- (a) the copy is a true copy of the by-law;*
- (b) the by-law was made in accordance with the Act;*
- (c) the owners of a majority of the units of the corporation have voted in favour of confirming the by-law; and*
- (d) if the by-law is a joint by-law made under section 59 of the Act, it is not effective until the corporations that made it have each registered a copy of it in accordance with subsection 56(9) of the Act.*

## **RULES**

### **Valid Types of Rule**

Section 58 of the Act provides that:

*The board may make, amend or repeal rules respecting the use of common elements and units to,*

- (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.*

Rules that do not have one of these two purposes are not valid rules under the Act.

In addition, rules must be reasonable and consistent with this Act, the declaration and the by-laws.

The onus of proving that a rule is unreasonable rests on the party challenging the rule. There are several cases indicating that when assessing the validity of a condominium rule, courts will defer to the discretion of the board of directors unless it is shown that the rule is not reasonable.

All persons bound by the rules shall comply with them and the rules may be enforced in the same manner as the by-laws.

### **Making Rules**

The owners may amend or repeal a rule at a meeting of owners duly called for that purpose. The Act does not provide authority for owners to make new rules at a meeting.

The board is entitled to make rules, as well as to amend and repeal them.

When making, amending or repealing a rule, the board must give a notice of it to the unit owners that includes,

- (a) a copy of the rule as made, amended or repealed;
- (b) a statement of the date that the board proposes that the rule will become effective; and
- (c) a statement that the owners have the right to requisition a meeting under section 46 and that the rule becomes effective at the time determined by subsections 58(7) and 58(8) of the Act.

### **When New or Amended Rules Come Into Effect**

Subsection 58(7) states:

*Subject to subsection 58(8), a rule is not effective until,*

- (a) *the owners approve it at a meeting of owners, if the board receives a requisition for the meeting under section 46 within 30 days after the board has given notice of the rule to the owners; or*
- (b) *30 days after the board has given written notice of the rule to the owners, if the board does not receive a requisition for the meeting under section 46 within those 30 days.*

Subsection 58(8) states:

*A rule or an amendment to a rule that has substantially the same purpose or effect as a rule that the owners have previously amended or repealed within the preceding two years is not effective until the owners approve it, with or without amendment, at a meeting duly called for that purpose.*

Also, subsection 58(9) states:

*Despite subsection (7), a rule proposed by the declarant before the registration of the declaration and description shall be effective until it is replaced or confirmed by a rule of the corporation that takes effect in accordance with subsection (7).*

In other words:

1. A rule made by the declarant before the condominium is created is in effect without any further notice, meeting or vote once the condominium is created. A copy of the rule is to be included in the declarant's Disclosure Package given to all potential purchasers of the units.
2. A rule made by the board of directors of a condominium will be in effect no sooner than 30 days after proper notice is given, except:
  - a. where the rule or amendment to a rule has the same purpose or effect as a rule that was amended or repealed by the unit owners within the two year period preceding the notice of the rule, it will not be in effect until it is approved at a meeting of owners which does not need to be a requisitioned meeting but must be called for that purpose; or

- b. in all other cases, where the owners requisition a meeting, in which case the rule comes into effect when approved by vote of the meeting.

A vote on a proposed rule requires approval of only a majority of the owners present at the meeting.

### **Joint Rules**

Section 59 of the Act allows condominium corporations that share facilities or services to create joint rules dealing with the use and enjoyment of those facilities or services.

To make, amend or repeal a rule, each corporation must follow the same procedures as if the rule were simply a rule of that corporation, and it is not in effect until 30 days after the proper notice has been given to each of the corporations (i.e., until 30 days after the latest notice by one of the corporations); but:

- If any of the corporations receives a requisition for meeting relating to the proposed rule or amendment, then each of the corporations must hold a meeting (or they can hold a joint meeting) to vote on the proposed rule or amendment; and
- If the joint rule or amendment has the same purpose or effect as a joint rule that was amended or repealed by the unit owners of the corporations within the two year period preceding the notice of the rule, it will not be in effect until it is approved at a meeting of owners of each condominium (or a joint meeting of all of them) which does not need to be a requisitioned meeting but must be called for that purpose.

Michael H. Clifton adapted from notes by Terry Audette (May 2008)