



# About Condo

## MAKING AND APPROVING BY-LAWS

There are various sections of the *Condominium Act, 1998* (the “Act”) that authorize the board of directors to enact by-laws for a variety of purposes.

Certain actions by the corporation, such as the lease or license of common elements, borrowing, compensating directors, granting easements over the common elements, and so forth, cannot be done without a proper by-law being in place. Other by-laws are necessary for the corporation to be better organized and/or to take more full advantage of all the provisions of the Act, such as a standard unit by-law or by-laws setting out provisions for meetings, elections or mediation.

It is very important that condominium by-laws be carefully and accurately drafted to reflect the true intention of the board and unit owners and to help ensure that the by-laws are not contrary to the Act or the declaration of the condominium. Knowledgeable legal or other counsel, as appropriate, should be sought.

A condominium by-law is not enforceable unless made effective in accordance with the requirements of the Act. The following is a brief summary of those requirements:

**a. *The Board Approves a Draft By-law***

At a duly called meeting of the board of directors, a draft by-law is presented, reviewed and discussed. Once a form of by-law is approved, the minutes of the meeting should not a resolution of the board to that effect and also directing that a meeting be called at which the unit owners will vote on the by-law and the draft by-law, in the final, approved form, be sent to unit owners with the notice of the meeting.

**b. *The Draft By-law is Distributed with a Notice of Meeting of Owners***

The by-law as approved by the board must be attached to the notice of the meeting at which the by-law is to be voted upon by the unit owners. The agenda for the meeting must indicate that the by-law will be presented for consideration and that a vote will be taken.

Any proxies being provided and allowed at the meeting should contain a space for cler instructions to be given to the proxy holder as to how he or she should vote on the proposed by-law. It would be advisable for the proxy form to clearly set out whether the proxy holder can still vote for the by-law if the by-law is amended by the owners at the meeting.

**c. The Proposed By-law is Voted On at a Meeting of Owners**

The by-law presented at the meeting must be in the form attached to the notice of meeting. A fair and formal discussion should take place. Where the by-law covers serious matters, it may be advisable to invite outside counsel to attend the meeting to help answer questions.

For example, with respect to a borrowing by-law, a representative from the lender could be of assistance. If the borrowing relates to major repair work, an engineer or representative of the contractor might be able to answer unit owners' questions. For a standard unit by-law, often the condominium solicitor is a helpful resource. For a by-law granting an easement over the common elements, the solicitor, surveyor and/or a representative of the party to whom the easement is being granted might be able to provide useful information.

Unit owners are entitled to propose changes to the by-law. Separate motions may be made and voted upon to approve (or reject) such changes prior to the vote on the by-law itself.

Approval of the by-law must be by a vote in which the owners representing a majority of the units vote in favour of the by-law. *Note that a by-law is not approved simply because it is favoured by a majority of the owners who attend the meeting.* The approving vote must be by the owners of a majority of the units.

The minutes of the meeting should include a copy of the final approved form of the by-law and a precise tally of the votes for and against the by-law.

**d. The Approved By-law is Effective once Registered on Title**

Once the by-law is approved, the authorized signing officers of the corporation must execute a document certifying that the by-law was made and approved in accordance with the provisions of the Act.

This certificate (currently Form 11 under Ont. Reg. 48/01 under the Act) is then attached to the front of a copy of the approved form of the by-law and they are registered on title to all of the units at the applicable Land Registry/Land Titles Office.

*Then, and only then, does the by-law come into effect.* It is therefore appropriate and generally advisable for these steps to be completed as quickly as possible following the owners' meeting where the by-law is approved. A report should be made to the unit owners as soon as the by-law is registered. A copy of the approved by-law must be included with all status certificates thereafter. If the new by-law completely repeals any older by-law(s), the repealed by-law(s) need not be included with future status certificates nor should any attempt be made to enforce them.

Usually, the assistance of legal counsel or another qualified agent will be necessary to effect registration of the by-law.

Michael H. Clifton (June 2007)