



About Condo

EXPLAINING AND DEFINING THE “STANDARD UNIT”

In 2007 there is significantly less confusion and uncertainty about the concept of the “standard unit” for condominiums in Ontario than there seemed to be around the time of its introduction in the *Condominium Act, 1998*, (the “Act”) which came into force in May, 2001. However, we find that there are still several condominium corporations that have not yet enacted a standard unit definition and a number of condominium developers who still have not grasped the concept. In other words, it is still something worth writing about.

NOT YOUR USUAL IDEA OF “STANDARD”

One idea that must immediately be eliminated in order to understand the standard unit concept under the Act is the idea that the term “standard unit” in the Act has anything to do with what that phrase could ordinarily be assumed to mean. Indeed, it may be safe to say that, in the Act, neither of the terms “standard” or “improvement” have, in relation to the standard unit concept, their typical meanings, but are really just statutory ‘terms of art’.

A typical mistake is to think, quite naturally, that the term “standard unit” must refer to the style or features of the unit as it was originally built, finished or furnished; or, in other words, that it means the developer’s standard product. However, this is not the case. Instead, the standard unit definition simply, and only, describes which components of the unit will be treated as “standard” and which parts will be treated as “improvements” for the purposes of defining the scope of insurance and repair obligations in relation to the units.

This means that it is possible (and sometimes appropriate) for a condominium’s standard unit definition to define some of the original (i.e., constructed by the developer) components of the unit as “improvements” and some of the additional (i.e., installed or constructed by the unit owner) components as “standard”.

The foregoing must be kept in mind as the balance of this memorandum is read.

It is also important to note that the Act effectively states that if there is no standard unit definition for a condominium, then there are no improvements to the units in the condominium. Therefore all unit components would be “standard” regardless of when or by whom they were installed or constructed: even what traditionally would have been considered the unit owner’s “betterments and improvements” to the unit. Some ramifications of this are discussed in this memorandum.

SCOPE OF THE STANDARD UNIT DEFINITION

Another important point to understand before reading any further is that the standard unit definition has nothing to do with the common elements of the condominium.

From time to time we have encountered condominium directors and unit owners who have failed to understand this point and mistakenly believe that somehow the standard unit definition redefines or reinterprets the unit boundaries and, therefore, changes what constitute the common elements. This is not the case.

Unit boundaries are defined in the declaration and description of the condominium and cannot be altered by a standard unit definition. The standard unit definition deals only with those components of the condominium property that are within the unit boundaries as these are described in the declaration and description.

We also have found that some developers do not understand, or do not pay attention to, this limitation with respect to the standard unit.

The Act requires developers of new condominiums to provide a standard unit definition for each class of unit in the condominium. Some developers fail to do this at all, while some others, who could at least be commended for making an effort, end up taking what they think is an easier path by simply providing copies of their marketing lists of standard features as the standard unit definitions. This is almost always inadvisable for at least two fundamental reasons.

One is that the developer's list of standard features is often inadequate. It typically will not include mention of several basic components of the unit, such as walls and ceilings, which are usually appropriate to refer to in the standard unit definition.

The other is that it sometimes includes too much: that is, that frequently such lists will refer to features appurtenant to the unit that are, in fact, common elements and not actually part of the unit at all. For example, many town-home style condominium units enjoy private access to rear yards with decks or patios in them; however, in traditional condominiums these privacy areas, including the decks or patios, are typically defined legally as parts of the common elements. Likewise, in many traditional condominiums doors and windows are common elements. It is simply wrong to include such features within the definition of a standard unit: No part of the common elements can be the subject matter of a standard unit definition.

On account of these typical problems, it often happens that the use of the developer's list of features as the standard unit definition renders the definition mostly ineffective in regard to the purposes for which it is intended.

PURPOSES OF THE STANDARD UNIT

As mentioned above, there are two purposes of a standard unit definition:

- (1) to define the scope of insurance obligations with respect to the units; and
- (2) to define the scope of repair obligations with respect to the units.

STANDARD UNITS AND INSURANCE

Under the Act, the condominium corporation is responsible for insuring all of the units and the common elements of the condominium against certain perils that are defined in the Act and the declaration and by-laws of the condominium. However, this obligation in regard to the units is limited to the standard unit as defined in the standard unit definition of the condominium. That is, the Act states that *the condominium does not insure any components of the units that, according to the standard unit definition for the condominium, are improvements.*

That is all well and good if the standard unit is defined. A conscientiously drafted standard unit definition will help to ensure that the condominium corporation is responsible to insure only those parts of the units that the corporation's board and membership consider appropriate.

A problem could arise, however, if no standard unit has been defined for the condominium. As noted above in this memorandum, it would appear that if there is no standard unit definition then there are no improvements to the unit, not even what typically would be considered the unit owner's "betterments and improvements". As a result, the condominium would be required to insure *all components* of its units regardless of what they are or when or by whom they were installed.

This could force the condominium to insure potentially expensive upgrades to the units that have been made by individual owners, which is usually not considered fair by other owners who have not made such changes to their units (e.g., why should I pay to insure someone else's marble countertops and hardwood floors?). However, a possibly more significant concern is that it is very likely in such a case that the board will not know what upgrades each unit owner has made. Thus, they will not know exactly what is being insured or how much insurance should be carried. It then becomes a very real possibility that the corporation will not be carrying sufficient insurance to cover its obligations (or, out of an abundance of caution, could wind up carrying too much, although this should be less of a concern than carrying too little).

Therefore, it is important to have a standard unit definition, and, when preparing a standard unit definition, a key issue that the board and membership of the corporation should consider is which components of the unit should be insured by the condominium (which would become the standard unit) and which should be the responsibility of the owners to insure individually (which would be defined as improvements).

STANDARD UNITS AND THE OBLIGATION FOR REPAIR AFTER DAMAGE

The other key consideration for boards and unit owners when preparing a standard unit definition is the effect of the proposed definition on the obligation to repair the unit after damage. The board and membership of the corporation should consider which components of the unit it is important (for reasons suggested hereafter) to ensure are kept in good repair by the party having the obligation therefor. Such components should almost always be included as part of the standard unit.

It should be noted at this point that some unit owners, board members and even property managers have erroneously thought that the standard unit definition somehow changes who is responsible for repairing the unit. This is not the case. The standard

unit definition *does not change* the allocation of the obligation for repair of the unit that is set out in the Act and declaration of the condominium. It cannot. Any changes to the allocation of such obligation must be done by way of declaration amendment. What the standard unit definition does in this regard is indicate which parts of the unit they are to which the obligation to repair after damage applies.

The Act limits the obligation to repair the unit after damage to just those components that are defined as standard in the standard unit definition. This means that whoever has the obligation to repair the unit after damage is not obliged by the Act to repair the improvements to the unit.

Again, it must be noted that if no standard unit definition has been enacted for the condominium, then the whole of the unit is standard and therefore the party bearing the obligation to repair the unit after damage must repair all components of the unit when they are damaged. This might or might not be of serious concern to the condominium as a whole, depending on who bears such obligation. In fact, all considerations relating to the effect of the standard unit definition on repair obligations can differ depending on whether it is the unit owner or the corporation that bears this responsibility.

Under the Act, the 'default' rule is that the condominium corporation is responsible to repair the units after damage. This obligation can be (and usually is) allocated instead to the unit owners in the declaration of the condominium.

Where the condominium corporation retains the obligation to repair the units after damage, then which components of the unit will be its responsibility becomes a significant consideration in respect of the budgeting for the condominium. For example, if items are included in the standard unit that are easily and frequently susceptible to damage, then the corporation that is responsible to repair the unit after damage will need to budget appropriately to cover this risk. However, if commonly damaged items are excluded (i.e., defined as improvements), the condominium might be able to reduce its repair budget (and thus reduce common expenses accordingly) since the responsibility to repair such items will fall to the individual unit owners.

Where the unit owner has been allocated the obligation to repair the unit after damage, then the considerations are somewhat different. This is largely so because, when a unit owner is obliged to repair the unit after damage and fails to do so in a reasonable time, the condominium has the obligation to perform the repair, charging the costs of the same back to the owner of the unit as common expenses. This duty and entitlement of the condominium only concerns the standard unit components: it does not exist with respect to repairing the improvements to the unit after damage.

In this case, the corporation should want to ensure that the standard unit will include those components of the unit that are important to ensure are kept in good repair, such as key structural components of the unit, components that impact significantly on the condition, use or enjoyment of other units or the common elements and those required to maintain compliance with safety or property standards and applicable building codes. For all these, it can be important to ensure there is an enforceable obligation to repair the same when damaged. This cannot be assumed with respect to any part of the unit that is defined as an improvement in the standard unit definition.

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