



# About Condo

## WHY CONSIDER A “BARE BONES” STANDARD UNIT BY-LAW?<sup>1</sup>

It is important – perhaps essential – for a condominium to enact a standard unit definition. A board that fails to at least attempt to enact a definition might end up being found negligent for such failure if, for example, in the meantime damage occurs and the costs to the corporation significantly exceed what would have been the case if an appropriate standard unit definition were enacted.

A challenge for many boards and unit owners is determining what should be included in the standard unit. There are no real limits on what components of the unit can be included within the standard unit. There could be practical reasons for including almost anything or, in some cases, almost nothing.

An increasingly typical form of standard unit definition is called the “bare bones” definition.

This form of definition tends to limit what is “standard” to just the essential, structural components of the property, such as walls and ceilings to drywall without including paint, wallpaper or plaster finishes, stairways and floor assemblies up to the sub-floor, without including floor coverings of any kind and basic electrical, plumbing and HVAC components, possibly excluding certain major optional or variable items such as the furnace or air conditioning units and appurtenant equipment. All finishing items, fixtures and other unit components that are usually regarded as discretionary (or whether the unit owner typically makes a decision as to the quality of item to be kept in the unit) tend to be defined as “improvements”.

It is not universally accepted that this is the best form of standard unit definition. However, it is often very practical and is preferred at many condominiums in Ontario. The following are some of the reasons that a “bare bones” form of standard unit could be preferred:

### CLARITY & SIMPLICITY

With forms of definition not limited to the unit’s “bare bones” there is the added challenge of having to define the levels of quality, style or other standards associated with many of the items included as part of the standard unit. A “bare bones” by-law suffers very little from this, if at all. Most truly “bare bones” forms of definition entirely avoid it. This can

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<sup>1</sup> This memorandum assumes a working knowledge of what a “standard unit definition” is under the *Condominium Act, 1998*. Readers who do not have this background may benefit from first reading the **About Condo** memorandum titled, “Explaining and Defining the ‘Standard Unit’”.

be helpful in so far as definitions that are clear and free of ambiguity can help to avoid uncertainty, cost and time lost in a dispute over whether a unit component is covered or not.

One related sort of risk can arise where a specific level of quality, style or other standard is associated with a defined component of the standard unit. Not only is it possible that such specified models or styles will not exist at the time a claim is made, there is also the chance that even if the specific item exists ultimately neither the condominium's insurer nor the unit owner's will cover the cost of that component's repair or replacement.

This could easily occur where the standard unit is defined to include an item of a particular level or standard of quality, but the unit owner has installed something of a different level. For example, the standard unit might cover 30-ounce carpet, while the damaged item in the owner's unit is a 40-ounce carpet. (Remember that the standard unit concept in the Act does not pay attention to who installed the component, whether it is original to the unit or a "betterment and improvement" made by the owner.)

In such a case, one cannot determine in advance whether the condominium insurer will decide to pay all, part or none of the cost of the repair or replacement of damaged item. The insurer could take the position that any item that is not identical to the specific item included in the standard unit definition is an improvement. If this occurs, it would then be the responsibility of the unit owner to cover the total cost of that item's repair or replacement. However, it also cannot be guaranteed whether the unit owner's insurer will take a contrary position to the condominium's insurer, such as that the whole item should be considered standard, or that only the cost of upgrading it to the improved level (e.g., the difference in cost between a 30-ounce and a 40-ounce carpet) should be covered.

Such situations undermine one of the purposes for which the standard unit concept was introduced, which was to avoid dispute over what is and is not covered by the condominium's insurance. The usual simplicity and clarity of "bare bones" form of definition can help to avoid these problems.

## **REDUCED RISK AND COSTS**

A fairly obvious benefit to the condominium corporation of having a "bare bones" standard unit definition is that far less of the unit is to be covered by the condominium's insurance than is the case with any other form of definition. This could result in reduced premiums but, more importantly perhaps, is also likely to result in reduced claims.

A "bare bones" definition can also help to avoid what we have heard several condominiums experience as the costs of self-insurance.

The risk of such costs arises because a great deal of damage that occurs in a condominium is relatively small and typically occurs to common finishing items, such as countertops and floor coverings. In several of these cases, the costs of repairs will not exceed the amount of the condominium's deductible (which deductibles are generally much higher than under a unit owner's "home owner" policy), so the tendency will be for the condominium to cover the costs of repairs itself rather than increase the number of claims that are made (since that, in turn, can result in increased premiums). Even where

the cost exceeds the deductible, the condominium may decide to self-insure in order to avoid multiplying the number of claims (in order, again, to seek to avoid the risk of increased premiums as well as reduced insurability).

As a result, it could be assumed that if there are fewer items included in the standard unit – particularly where the most commonly damaged finishing items are excluded – then such costs and risks to the condominium should also be reduced. Instead, each unit owner will bear only the usual risks associated with his or her own unit components and lifestyle. It is unlikely that an individual owner will experience as many claims as the condominium could overall, or that the deductible under the unit owner's policy is as high as under the condominium's policy. Therefore the owner likely does not bear the same risks as the condominium if required to insure more of the unit as a result of the enacting of a "bare bones" definition.<sup>2</sup> And, it should be remembered, that every saving experienced by the condominium could, in fact, also be a saving to the owners (though it is not necessarily the case that the reduced risks to the condominium will transfer as equivalent savings to the unit owners).

However, there is another risk with respect to costs that is solely borne by the unit owners where a standard unit definition other than a "bare bones" definition is in place. This risk arises from the fact that not all unit owners install the same features and fixtures in their units. Some unit owners have more expensive tastes than others, and perhaps more capacity to afford them and care for them. However, if the condominium does not have a "bare bones" standard unit definition that excludes such items, then all of the unit owners will end up bearing the costs of insuring and repairing the other unit owners' more expensive features and fixtures.

For example, if a standard unit definition includes "counter tops", this would cover a unit owner's counter tops that are marble or granite even where all of the other units have only builder's standard laminate counter tops. The cost of insuring or repairing the one unit owner's more expensive counter top is distributed amongst all the unit owners through their required common expense contributions, which is a boon for the one with the more expensive tastes but an unfair burden to all of the others. With a "bare bones" form of definition, it is more typical that each unit owner is responsible for the cost of insuring, repairing and replacing all of his or her own discretionary upgrades and improvements to his or her unit, which would appear to result in a more fair allocation of costs.

For such reasons as these, many condominiums have adopted, and more are considering enacting, a "bare bones" form of standard unit definition.

Michael H. Clifton (March 2007)

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<sup>2</sup> A related consideration in regard to insurance deductibles is that under subsection 105(2) of the *Condominium Act, 1998*, and under certain by-law amendments that section 105 permits, the unit owner can become responsible to pay the condominium's deductible (or the cost of repairs up to that amount) in the event of damage to the owner's unit that is covered by the condominium's insurance. Since the condominium's deductible is typically higher than under a unit owner's homeowner's policy, not only is the risk that a unit owner will have to pay the condominium's deductible greater where more components of the unit are included in the standard unit, but also for any components included in the standard unit the maximum cost risked by the unit owner will tend to be greatly increased on account of the condominium's higher deductible.