

About Condo

WHY SHOULD A UNIT OWNER PREFER A “BARE BONES” STANDARD UNIT DEFINITION?¹

In earlier memoranda we have advised that it is essential for a condominium corporation to enact a standard unit definition as set out in the *Condominium Act, 1998* (the “Act”). We have also advised that in many cases the most desirable form of standard unit definition for a condominium is the “bare bones” form.

This is not a universally accepted position, but in our experience it is often viewed as more practical and preferred at many condominiums in Ontario. It is generally not difficult to explain to a condominium board or manager why the “bare bones” definition benefits the condominium corporation itself, but is it also good for unit owners, and, if so, why?

Although this memorandum presumes knowledge of the basic concepts already, the following is worth reiterating for clarity:

- The “bare bones” form of standard unit definition limits what is “standard” to, more or less, just the essential, structural components of the property.
- Such components would usually include walls and ceilings to drywall without including paint, wallpaper or plaster finishes, stairways and floor assemblies up to the sub-floor, without including plaster 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. The exact contents of the definition will differ from condominium to condominium.
- Each condominium corporation is different, but in essence 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) are defined as “improvements”.

The following are some of the reasons that a “bare bones” form of standard unit definition could be preferred by unit owners:

¹This 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’”. Readers may also wish to review the **About Condo** memorandum titled, “Why Consider a ‘Bare Bones’ Standard Unit By-law?” which examines the same issue more from a condominium director’s or manager’s perspective.

(1) NO ONE IS HELD RESPONSIBLE FOR THEIR NEIGHBOUR'S TASTES...

Not all unit owners install the same features and fixtures in their units. There is no inherent reason that they should support one another's individual choices or tastes in this regard. Some unit owners have more expensive tastes than others, and perhaps more capacity to afford them and care for them.

If the condominium does not have a "bare bones" standard unit definition that excludes such items, 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 and obligations.

(2) ...OR FOR THEIR NEIGHBOUR'S CARELESSNESS

In addition, what is perhaps tritely obvious is that the fewer components of the units that are covered by the condominium's insurance, the fewer claims there are likely to be made under the condominium's insurance in relation to unit damage. More to the point: where those parts of the units that are most susceptible to damage – such as floor coverings and countertops – are excluded from the standard unit (as is the case in a "bare bones" form of definition), the risks of multiple claims is even more greatly reduced.

A reduction in the risk or likelihood of claims should mean that the costs of insurance (both in terms of premium costs, including increases, and in terms of deductible payments, to the extent the condominium must pay them) are likely to be less than where more components of the unit are covered by the condominium's policy. Since such costs are shared by the unit owners through their payment of contributions to the common expenses of the condominium, every unit owner benefits from decisions that reduce the same.

Furthermore, the insurability of the condominium is better protected when the risk or likelihood of claims can be minimized. That is, a condominium that has too many claims could ultimately become too significant a risk to be able to purchase insurance, or at least to obtain reasonably affordable insurance.²

² Where there is a risk of multiple claims, the condominium board might decide to effectively "self insure," paying the cost of repairs out of the condominium's operating expense account. As a result, insurance costs might not increase, but the condominium budget likely would on account of the requirement to anticipate paying for such repairs. Either way, the unit owners will bear the risk of increased costs where those components of the unit that are susceptible to damage are included as part of the standard unit.

All other things being equal, increased protection from such risks and associated costs shared by all unit owners can be obtained by virtue of enacting a “bare bones” standard unit definition. Also, as a result each unit owner will bear only the risks of his or her own carelessness and errors, and not those of his or her neighbour. The careful owner is thus directly rewarded, since there will be few or no claims against his or her own insurance and he or she will not be paying for the claims that arise on account of another unit owner.

(3) REDUCED UNCERTAINTY ABOUT WHAT IS INSURED AND BY WHOM

Forms of standard unit definition other than “bare bones” typically define the levels of quality, style or other standards associated with many of the items included as part of the standard unit. (Where they do not the problems discussed in this section are merely exacerbated.) Although this would appear at first blush to be helpful, over time it can create confusion or uncertainty.

One issue is that since unit owners are usually entitled to make many upgrade certain components of the interior of their units without informing or obtaining permission from the board of directors, it is possible that a unit will not have the specific item listed in the standard unit definition. For example, the definition might provide for a 30-lb carpet, while the owner has installed 40-lb carpeting. In this case, there is the chance that neither the condominium’s insurer nor the unit owner’s insurer will cover the cost of that component’s full repair or replacement, leaving the unit owner effectively uninsured even though both the owner and the condominium corporation have paid for insurance coverage that includes carpeting.

What this means is that there is a risk that on the one hand the condominium insurer will take the position that any item that is not identical to the specific item included in the standard unit definition is an improvement and therefore is not covered by it, while on the other hand and at the same time the unit owner’s insurer takes the position that the condominium’s insurer should cover up to the cost of replacing the item defined as standard and that the owner’s insurance will cover any additional cost if the owner had installed an upgraded item.³ Until the insurers agree on what should be done, it is probably the owner him or herself who will have to bear the cost of the replacement, or do without the item at all.

The only easy solution for the unit owner is never to upgrade or alter the interior of his or her unit from what is set out in the standard unit definition. In short, every unit must have all the same fixtures and features at all times, matching the minimum standard set out in the standard unit definition. For most unit owners, this is not a desirable solution.

Even if that solution is desirable, the owner may still run into problems when seeking to repair or replace standard unit items, since any such item of the specified model, level of quality, style or other standard set out in the definition, might not exist at the time a claim is made. Therefore, it would not be able to be replaced in accordance with the definition.

As a result, it is probable that the condominium’s insurer would either replace the item

³ These are only examples of positions that either insurer might take. Each insurer will have a range of choices, any of which might or might not correspond with each other or with the owner’s wants or expectations. This is the basis for the uncertainty in this situation: It simply cannot be assumed in advance what position either insurer will take.

with a comparable component of its choice or will leave it to the owner to obtain a replacement. The condominium's insurer will make a determination as to whether it will cover all, part or none of the cost of its replacement, leaving the owner to bear any balance of the cost. It is not clear whether the unit owner's insurance will cover any part of the amount to be paid by the owner, particularly since the damaged item would have met the exact description within the standard unit definition.

A "bare bones" by-law suffers very little from these kinds of uncertainty, if at all. They are generally clear and free of any substantial ambiguity and thus help to avoid uncertainty, cost and time lost in a dispute over whether a unit component is covered or not and by whom.

(4) REDUCED RISK OF RESPONSIBILITY FOR CONDOMINIUM'S DEDUCTIBLE

Section 105 of the Act contains provisions that can result in a unit owner being 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 insurance covers the whole of the standard unit, it is obvious that the more components of the unit that are included in the standard unit, the more likely it is an owner will have to pay under those provisions.

Further, since the condominium's deductible is typically higher than the deductible 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.

Thus it is typically to a unit owner's advantage to have more parts of the unit covered as improvements by his or her own policy of insurance than by the condominium's policy, which is a definite result of having a "bare bones" form of standard unit definition.

For such reasons as these, many condominium unit owners are decided in favour of having their corporations adopt a "bare bones" form of standard unit definition.

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