

**2017**

**Condominium**

**Developer Infosheet**

2017

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*Alberta* 

## **BUSINESS INFOSHEET**

This publication is intended to provide general information only and is not a substitute for legal advice.

### **New Rules for Condominium Developers**

Service Alberta recommends readers of this publication obtain legal advice appropriate to their circumstances. In particular, undertaking a condominium development is often complicated and requires diligent attention to a considerable number of legal requirements and non-legal details. Chief among them are ensuring that prospective condominium purchasers have all of the necessary information to inform their purchases, and condominium boards are positioned for success. Appropriate preparations for condominium sales require developers to have a thorough understanding of the governing legislation, the corporations they develop, and the risks they assume in taking on the responsibilities of a condominium developer. As such, this document should be considered a quick reference sheet and is not a substitute for legal advice.

Readers should refer to the *Condominium Property Act*, the Condominium Property Regulation, and the amending legislation for details and specific wording. The legislation can be found on Alberta's Queen's Printer website. Links to the online legislation and contact information for the Queen's Printer are provided in the section titled "FOR MORE INFORMATION," on page 16 of this publication.

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## Introduction

Amendments to the *Condominium Property Act* and supporting regulations are bringing changes to the way developers handle purchase agreements, trust funds, the appointment of an interim board of directors, and the turn-over of the corporation and specified documents to an elected board.

These changes have come about through the passage of the *Condominium Property Amendment Act* (CPAA) in the legislature in December 2014, and the development of supporting regulations that supply technical detail. Due to the complexity and the large numbers of amendments, the amendments are being implemented in stages.

These changes to the legislation are based on research into legislation and practices in other jurisdictions, as well as consultations conducted by Service Alberta with affected stakeholders, including condominium owners, developers, managers, real estate professionals, as well as business and industry associations.

Based on that research, Service Alberta heard about a number of issues faced by condominium buyers, including:

- extra costs incurred when projects were finished late, or not at all,
- difficulties in using the courts to resolve issues related to incomplete units or common property,
- developers going bankrupt without adequate protection of purchasers' deposits.
- condominium fees being set at a low level for the initial years, then increasing substantially when the corporation began collecting contributions that included actual operating costs plus an allocation to the reserve fund.

The amendments related to cancellation rights, occupancy dates and the basis for establishing condominium fees endeavour to balance the needs and interests of the various stakeholders. Details are provided in the related topics within this document, where specific sections of the legislation are summarized and explained.

Regulations for the first stage of amendments are focused on the process to purchase a new condominium. The majority of the new regulations will come into effect on January 1, 2018. The remainder will come into force April 1, 2018.

Developers and purchasers are required to deal fairly with each other, as they are in the legislation that has been in effect since 2000. This duty will be enhanced with requirements for additional documents to be included in the purchasers' information package, realistic proposed budgets, mandatory disclosure of occupancy dates, notices of material changes and information about protection of the purchaser's deposit. Deposit protection will be provided through a Purchaser Protection Program, deposit of the payment into a trust account managed by a prescribed trustee, or a combination of a protection program and trust account. Developers will no longer be able to hold deposits themselves.

## Parking Spaces Shown on Condominium Plan

Condominium plans registered after April 1, 2018 must show and label parking spaces for visitors and persons with disabilities. These must be shown on common property. If the plan is a re-division under Section 20 of the Act, these parking spaces must be shown on a unit or units owned by the corporation and designated for common use.

A condominium plan for a building that contains units must also be accompanied by a certificate from the municipal authority stating the number of parking spaces for visitors and persons with disabilities meets municipal requirements.

## Information that must be provided to Purchasers

The *Condominium Property Act* sets out requirements for information a developer must disclose to a purchaser before making a sale. These requirements are being enhanced by new disclosure requirements. The information below sets out the existing and additional disclosures that must be provided to purchasers. Readers should refer to sections 12 to 13.2 of the CPA and sections 20.01-20.11 of the Regulation for complete legislative details.

### Purchase agreements

Before agreeing to sell a unit or a proposed unit, a developer must provide purchasers with a purchase agreement that contains:

- A notification of the purchaser's cancellation rights, in the prescribed form;
- The amount or estimated amount of monthly unit contributions, based on the actual or proposed budget of the corporation; and
- The unit factor of the unit and the method determining of unit factors for all units in the condominium plan;

It may be that a unit or the common property is not completed when the purchase agreement is made. If so, the agreement requires a description, drawing, or photograph of the following kinds of information:

- The interior finishing and all major improvements to the common property in a building and to all property of the corporation;
- The exterior finishing of the building;
- The landscaping
- Any significant utility installations, major easement areas, retaining walls, and similar significant features;
- Recreational facilities, equipment, and other amenities;
- Maintenance equipment for common property, and
- The location of roadways, walkways, fences, parking areas, and recreational facilities.

Sections 12.2(a) and (b) of the amended Act set out the requirements of the purchase agreement in more detail. Readers should refer to those sections in addition to this summary.

### Disclosure documents

In addition to the purchase agreement, the developer must provide specific disclosure documents to each purchaser before agreeing to sell a unit or proposed unit. Section 20.01(6) of the amended regulations permits disclosure documents, including the occupancy date statement, to accompany the

purchase agreement, or be included as part of the purchase agreement, at the developer's option. In either case, the documents required under section 12(1) of the Act must be listed in a table of contents that clearly identifies the documents being delivered to the purchaser.

Existing disclosure provisions from the CPA still apply, including:

- the purchase agreement (described above);
- the bylaws or proposed bylaws;
- any management agreement or proposed management agreement;
- any recreational agreement or proposed recreational agreement;
- if the land on which the condominium parcel is located is leased land, a copy of that lease;
- information about any mortgage or proposed mortgage that will affect the title to the unit after the title is transferred to the purchaser, including either a copy of the mortgage or a statement including the information required in section 12(2) of the Act;
- the condominium plan or proposed condominium plan;

Under the new legislation, developers must also provide the following information to purchasers:

- a table of contents clearly listing all of the information and documents that must be disclosed;
- any mortgage or financial encumbrance registered against property the corporation will own;
- any home warranty insurance contract under the *New Home Buyer Protection Act*;
- a statement setting out a fixed occupancy date, or a range of dates, which may be included in the purchase agreement or as a separate document. (Additional information about the occupancy date is provided in the OCCUPANCY DATES section on pages 7 and 8 of this document.);
- the most recent budget or proposed budget of the corporation. (Specific requirements for the budget are set out in the Budget Information for Purchasers section, on pages 4 and 5 of this document);
- if the land where the unit will be located is leased land, the term, rent, renewal rights of, and parties to the lease;
- the name and the address for service of the developer;
- if deposits are required, the name and the address for service of the trustee who will hold these deposits;
- if the development is not substantially complete, and if the unit is not a bare land unit, the floor plan of the unit and details of the materials to be used to finish the unit; for phased developments, a copy of the phased development disclosure statement;
- a list of any fees, rents or other charges the corporation will have to pay to the developer or a third party for the use of any units, common property or other property of the corporation;
- the amount of any occupancy fees the developer will charge prior to contributions being levied by the corporation;
- a description of any other fees the developer will charge the purchaser.

If a condominium plan has not been registered at the time the purchase agreement is entered into, the developer must disclose whether they have a registered interest in the land and, if so, provide a valid certificate of title or other registration showing the developer's interest in the land.

If there are bare land units in the parcel, the disclosure must include a description of any utilities or services the corporation must pay for or be responsible for, including water, sewage disposal, electricity and natural gas and a statement as to whether the developer will seek redivision of any units in accordance with section 20 of the Act.

### **Electronic delivery**

The disclosure documents required by the legislation may be provided by electronic means, if the developer and the purchaser consent to the use of these means. For example, the documents, other than the purchase agreement, could be contained on a DVD or USB memory device that could be provided to prospective condominium unit purchasers. However, the purchase agreement and the occupancy date statement (if separate from the purchase agreement) should be provided in hard copy.

### **Conversion units**

If the unit is part of a condominium conversion, the disclosure must also include:

- a summary of the deficiencies identified in the required building assessment report;
- a description of the previous use of the building, and
- a copy of the reserve fund study and report.

A purchaser may request a copy of the full building assessment report. The request must be made to the developer in writing, within 10 days of the date when the purchaser received the summary of the deficiencies identified in the building assessment report. If the purchaser requests a copy of the building assessment report, the purchaser's cancellation rights are extended until 10 days after the report is received by the purchaser.

Additional requirements for conversion units are described in the BUDGET INFORMATION FOR PURCHASERS section on page 7, and the CONDOMINIUM CONVERSIONS section on page 10 of this document.

### **Occupancy permits**

When a municipal authority issues an occupancy permit or written permission in respect of a unit under the *Safety Codes Act*, the developer must provide the purchaser with a copy of the occupancy permit or written permission either prior to or at the time the purchaser takes possession of the unit.

### **Security deposit**

If a purchaser of a residential unit rents that unit from the developer prior to receiving title to the unit, the developer may charge the purchaser a security deposit. The CPA already permits this practice. The amended Act simplifies the language that specifies the security deposit must not be greater than the amount of one month's rent.

## Occupancy fees

After the purchaser takes occupancy of the unit, a developer may charge occupancy fees until the first monthly contribution becomes payable under section 39 of the Act. The amount of occupancy fees must not exceed the amount disclosed to the purchaser at the time the purchase agreement was signed.

The requirements for occupancy fees do not apply to the payment of rent and security deposits the purchaser pays to the developer before title is transferred if the amount of the rent or security deposit was agreed to between the developer and the purchaser.

## Purchaser's right to Cancel Agreement

The amended *Condominium Property Act* clarifies purchasers' rights to cancel a purchase agreement within 10 days from the date they signed it. If the purchaser did not receive all the required documents before signing the purchase agreement, the cancellation period extends to 10 days after they receive all required disclosure documents.

If the unit is in a building converted from another use, the purchaser may have extended cancellation rights, depending on when the purchaser was given the required summary of the building assessment report (BAR). For example, if the purchaser has requested a copy of the full BAR after receiving the BAR summary, the purchaser may have a further 10 days after receiving the BAR in which to cancel the purchase agreement.

Purchasers are entitled to a full refund within 15 days after the developer has received their written notice to cancel.

## Budget Information for Purchasers

One of the documents a developer must deliver to the purchaser is the budget or proposed budget of the condominium corporation.

If a budget has already been created by the corporation, the developer must provide a copy of this budget to the purchaser.

If the corporation has not yet completed a budget, the developer will have to prepare a proposed budget. This proposed budget must be for a 12-month period, and include:

- the projected total revenue of the corporation;
- the projected total expenses of the corporation;
- the specific projected expenses listed under the following categories:
  - maintenance and repairs,
  - insurance,
  - utilities,
  - condominium management services,
  - other contractual services,
  - reserve fund study,
  - any other expense;
- the reserve fund payments in accordance with the regulation;



- The amount allocated for the reserve fund in the proposed budget must be a reasonable amount of the projected total revenue of the corporation.
- the name of the person or business who prepared the budget along with their credentials;
- the date the budget was prepared;

The proposed budget may include an estimate for inflation in respect of projected expenses.

After the board of directors prepares the actual budget, the developer must provide purchasers the actual budget for each fiscal year, instead of the proposed budget.

### **Budgets for phased developments and plans of redivision**

If a developer sells a unit or proposed unit contained in a plan for redivision or in a second or subsequent phase of a phased development, the developer must provide the purchaser with estimates of the changes to the corporation's expenses that are likely to arise when the redivision, or the next phase, is substantially completed.

### **Underestimated Expenses in Proposed Budget**

If the actual expenses of the corporation in the first year after condominium contributions are levied are more than 15% greater than the expenses listed in the proposed budget, the developer will be required to pay the corporation the difference in expenses above the 15% variance.

For example, if the total expenses estimated in the proposed budget were estimated at \$100,000, the developer would be responsible for actual expenses above \$115,000. If the actual expenses came in at \$120,000, which is 20% greater than the proposed budget, the developer would be responsible to pay the corporation \$5,000 (the difference between \$120,000 and \$115,000) after being notified of the difference.

If such a variance occurs, the corporation must provide notice to the developer within 90 days after the preparation of the financial statements for the first fiscal year in which contributions are levied on owners. The developer has 60 days after receiving the notice to make the payment to the corporation.

However, the developer is not responsible to pay increased expenses of the corporation resulting from:

- expenses that were not reasonably foreseeable at the time the proposed budget was prepared;
- changes in insurance premiums or deductibles for any policies paid for by the corporation;
- changes in utility rates;
- charges for legal services provided to the corporation after the first board was elected;
- an increase in the cost of a reserve fund study;
- an increase in inflation compared to an estimate of inflation in the proposed budget; or
- expenses incurred by the elected board due to a change, or changes, in the contracts for services under section 17 or 17.1 of the Act. For additional information about contracts that may be changed or terminated by the elected board, please see the TERMINATION OF AGREEMENTS section on page 14 of this document.

## **Interim Board – Applies January 1, 2018**

Within 30 days of the registration of a condominium plan, a developer must appoint an interim board for the condominium corporation. If the condominium plan was registered before January 1, 2018, the developer must appoint the interim board before April 1, 2018.

In either case, the names and addresses of the board members must be filed with the Land Titles Office within 30 days of their appointment to interim board, using Form 8 in Schedule 1 of the Regulation.

The interim board has the same duties to act in the best interest of the corporation as the elected condominium board, including control, management and administration of the corporation's property, the common property and managed property, and must make reasonable efforts to pursue any remedies or claims under warranties or insurance policies covering these properties. Resolutions adopted by the interim board must be recorded, even if no meeting is held on the resolution. The interim board holds office until the first board is elected by the owners.

## **Occupancy Dates**

Developers must provide purchasers a final occupancy date for the unit. This may be a fixed date, or it may be the last date in a range of dates. Developers must ensure that the purchaser initials the occupancy date statement when it is delivered to the purchaser at the time the purchase agreement is signed.

If a developer provides a range of dates within which the unit will be available for occupancy, and later selects a specific date in this range when the unit will be available for occupancy, the developer must provide at least 30 days' written notice of the date to the purchaser.

If a unit is not ready for occupancy within 30 days after the **final** occupancy date, the purchaser will have the right to cancel the purchase agreement any time up until 10 days after they receive a notice from the developer setting out a new final occupancy date. Alternatively, the purchaser may provide the developer with a written acceptance of the revised occupancy date. Even if the purchaser does not expressly agree, the new date becomes binding 10 days after the developers' notice of the new date, unless the purchaser cancels the agreement before that.

Delays for specific legitimate causes will not allow the purchaser to claim damages or cancellation rights for delays, so long as the developer gives proper notice of the delay. Legitimate causes are defined by the regulation and consist of only the following events:

- fire
- explosion
- flood

- events leading to the declaration of an emergency, public emergency, or disaster under provincial or federal legislation
- impact by aircraft, watercraft, or land vehicles
- riot, vandalism, or malicious acts
- a delay in the issuance of a development permit under the *Municipal Government Act* due to an appeal, extension, or failure by the development authority to issue the permit decision within timelines required by law
- the issuance of an order under the *Historical Resources Act* due to a historical designation or the discovery of historical resources

If a developer delays the occupancy of a condominium unit due to one of these reasons, the developer must advise the purchaser of the delay and the cause as soon as the developer is aware. The developer must then provide a notice to the purchaser, within a reasonable period of time, which gives a revised final occupancy date. The revised final occupancy date must reflect a reasonable length of time to remedy the results of the event that caused the delay.

## Material Changes

A “material change” is considered any change from the information provided in the disclosure, where that change would reasonably have a negative effect on the value or use of the unit, common property, or real property of the corporation. For example, a change to the amenities provided on the common property that would lower the overall common property value may be considered as a material change. A difference between the proposed budget and actual budget of the corporation, or a change in the occupancy date of the unit, are not material changes for the purposes of the Act, as those matters are dealt with separately.

If a material change occurs, a developer must provide written notice to the purchaser within a reasonable time after the change occurs. This notice must be provided before the purchaser takes possession of the unit. If a purchaser learns of a material change but has not received notice from a developer, the purchaser can apply for a remedy from the court on becoming aware of the change. However, the remedy must be sought either before the purchaser receives title to the unit, or within the first twelve months after receiving title to the unit.

If a purchaser feels a material change is sufficiently important to affect their purchase of the unit, they have the option to file in court within 60 days of the notice or becoming aware of the change. If a purchaser files in court, the court can order any remedy it feels is appropriate, which may include damages. The court can also terminate the purchase agreement if the purchaser has not yet received title to the unit. Of course, the purchaser and the developer may reach a settlement before trial. Settlements could include, but not be limited to, a reduced purchase price or partial refund, or cancellation of the agreement.

## Condominium Conversions

A condominium conversion is a condominium plan that applies to an existing building that was used for another purpose and was not originally included in a condominium plan. For example, the units in a residential building may have been occupied entirely by renters, or the building may have been used previously for commercial purposes, such as warehousing, manufacturing or office space.

The rules applying to new condominium construction, including appointment of an interim board, disclosure to purchasers before a sale, deposit and trust account requirements, and cancellation rights, also apply to the sale of conversion units. There are also specific disclosure requirements for conversion units related to the Building Assessment Report, explained below.

When a developer undertakes a conversion of a building into residential condominiums, the developer must arrange for the preparation of a building assessment report (BAR) for the common property, managed property and any property of the corporation. The BAR must be completed by a professional engineer, professional technologist or registered architect. The report must be based on a non-invasive inspection of the property, be prepared in accordance with the regulations and must be completed no earlier than 180 days before the sale or offering for sale of the first unit in the building. This last requirement ensures that the report is not out of date before it is provided to purchasers.

At a minimum, the BAR must identify any deficiencies related to the delivery and distribution systems, any mechanical systems, the building envelope, exterior drainage systems and load bearing parts of the building. The person preparing the report must also prepare a summary of the deficiencies identified in the report. A copy of the summary must be provided to all prospective purchasers. A copy of the report must be provided to a purchaser upon request. For additional information about the purchaser's request for a copy of the BAR, please refer to the section of this document related to information provided to purchasers of conversion units on page 5.

For information about the relationship of the BAR summary and the full report, including their effect on a purchaser's cancellation rights, please refer to the PURCHASER'S RIGHT TO CANCEL AGREEMENT section, on page 6 of this document.

## Protection of Purchasers' Deposits

All payments a developer receives from a purchaser that are needed to complete a development must be held in trust. All trust funds must now be held by a prescribed trustee, who must be a lawyer who is an active member of the Law Society of Alberta, or a law firm whose partners are active members. These lawyers must also be approved to operate a trust account under the *Legal Profession Act*.

To ensure compliance with the new requirements, every developer who will be taking purchase deposits should have a conversation with their real estate lawyer about these purchase deposits, preferably before the new trust requirements come into effect on April 1, 2018. This conversation should include considerations to ensure compliance with other applicable laws (e.g. money laundering legislation) and other requirements the lawyer may be required to follow for trust accounts and client interactions.

Any developer who receives money that is to be held in trust must deposit that money into a trust account within three days of receiving it, not including holidays and weekends. The account must be held in Alberta by a prescribed trustee. After a lawyer receives a purchase deposit, a lawyer has 10 days to send the purchaser a notice that the deposit is in the lawyer's trust account.

With the developer's agreement, a purchaser may instead retain their own lawyer to hold the purchaser's deposit. Within 10 days of receiving the money, the purchaser's lawyer must send the developer a notice that the deposit is in the lawyer's trust account.

Purchase deposits that are covered under a Purchaser's Protection Plan approved by the Minister of Service Alberta, or that are held as a security in relation to the unit under another enactment, are not required to be held in a trust account. For a current list of approved Purchaser Protection Plans, please see the section titled FOR MORE INFORMATION on page 16 and 17 of this document.

A lawyer may release condominium purchase deposit money from a trust account under one or more of the following circumstances:

- The title of the unit is transferred to the purchaser and the common property is substantially complete;
- The money is secured by an approved Purchaser's Protection Program;
- The money is secured by a security provided under another statute or regulation;
- The purchaser cancels the purchase agreement for a reason allowed under the *Condominium Property Act*;
- A condition imposed by the purchaser in the purchase agreement has not been satisfied or removed in the time allowed by the agreement;
- The developer terminates the purchase agreement according to that agreement;
- The purchaser and developer have mutually agreed to the release;
- In order to meet a court order or where money is paid into court;
- If the money is paid to the trustee in error.

If one of the parties has breached the purchase agreement in a way that results in a contractual right to end the agreement, the prescribed trustee may release money from the trust account to the party alleging the breach, but only if:

- The party alleging the breach gives proper notice to both the prescribed trustee and to the other party to the purchase agreement, and
- The party served with the notice of the alleged breach does not serve a response within 30 days on the alleging party and prescribed trustee.

A prescribed trustee may transfer the money held in trust to another prescribed trustee. The trustee making the transfer must notify the developer and the purchaser of the transfer.

## **Election of First Owners' Board and Turnover of Documents**

The timelines for the meeting to elect the first owner's board of directors has been simplified. The developer must now convene a general meeting within 90 days of the day that certificates of title to

units representing 50% of the unit factors have been transferred to purchasers. In a phased development, this meeting must be held within 90 days of the day when 50% of the unit factors in the phase were transferred to purchasers. If the developer does not convene this meeting within the required time, any owner can convene the meeting.

At this meeting, once the board is elected, the developer is required to provide certain documents to the board, to smooth the assumption of governance of the corporation by the owners. These documents must be provided without cost, and include:

- all warranties and guarantees on the property of the corporation, the common property and managed property;
- the structural, electrical, mechanical and architectural working drawings and specifications, and as built drawings that exist for the property of the corporation, the common property and managed property of the corporation;
- the plans showing the location of underground utility services, sewer pipes and cable television lines located on the land;
- all agreements to which the corporation is a party;
- all certificates, approvals and permits issued by a municipal authority, safety codes inspector, the Government of Alberta or an agent of the Government of Alberta that relate to the property of the corporation, the common property and managed property;
- any building assessment report and reserve fund report required under any legislation other than the *Condominium Property Act* and regulations (for example, the *New Home Buyer Protection Act*.)
- copies of all plans, documents and amended documents that are required to be prepared under the *Safety Codes Act* for the buildings on the condominium parcel;
- a document setting out a list of all outstanding orders made under the *Safety Codes Act*, *Municipal Government Act* or the *New Home Buyer Protection Act* in respect of the land or building;
- a copy of the registered condominium plan and any plan of re-division;
- copies of all manuals, schematic drawings, operating instructions, records of service and repairs and other similar information or documentation possessed by the developer for any common property or property of the corporation;
- a list of the members of the interim board of directors;
- a current list of all owners, with each owner's,
  - name or names, unit number, municipal address, address as registered in a land titles office and any alternative address for service provided by the owner to the corporation,
  - unit factors for each unit, and
  - exclusive possession areas;
- the names and addresses of all mortgagees who have given written notice to the corporation;
- a list of the names of each tenant, the unit number being occupied by the tenant, and the amount of any deposit paid by the owner of a rented unit to the corporation;
- any rules made by the board;
- any unsatisfied judgment of a court or another decision maker in proceedings involving the corporation;
- any legal or other professional advice or opinions paid for by the corporation;

- any proposed budget, budget or annual budget of the corporation, any financial statements prepared for the corporation's current fiscal year and any financial statements in the developer's possession or control respecting previous fiscal years;
- all records of the bank, trust company, treasury branch or credit union accounts holding the corporation's funds, including the reserve fund and operating funds;
- all tax records of the corporation;
- each lease, licence or other instrument granting an owner the right to exclusive possession of part of the common property;
- a copy of any restrictive covenant registered against the parcel
- all current insurance policies obtained by or on behalf of the corporation, and the certificate respecting each insurance policy;
- all caveats registered against units that are owned by the corporation or intended to be transferred to the corporation.

At this meeting (sometimes called the "turnover meeting"), the interim board must also provide the newly elected board with the original or a copy of all resolutions, minutes and other records and documents of the interim board. In addition, if the interim board possesses any of the documents in the list above, they must provide those documents to the new board.

The requirements listed above for the meeting to elect the first owner's board of directors and turnover of documents come into effect on January 1, 2018. However, for any turnover meetings convened between January 1 and April 1 of 2018, the developer and interim board must provide documents as soon as possible after the meeting. After April 1, 2018, the documents must be provided at the meeting.

The following changes will come into effect **January 1, 2018**.

### **Developers' Continuing Obligations**

The developer remains responsible for any certificate, approval or permit they are required to obtain for the property of the corporation, the common property or managed property, even if the condominium plan has been registered, the board has been elected, or the developer no longer has an ownership interest in the corporation.

### **Developers' Obligation to Pay Contributions**

Once condominium contributions are being collected from owners, the developer is required to pay contributions for the units they own on the same basis as the other owners, regardless of what the bylaws say.

### **Termination of Agreements**

Existing provisions of the *Condominium Property Act* allow the condominium corporation, after the first board election, to cancel any management agreements made by the developer, as long as at least one year has elapsed from the day the management agreement was made.

Amended provisions will allow the corporation to terminate other agreements entered into by the developer or interim board within 12 months of the election of the first board. Such agreements can be terminated at no cost to the corporation with 60 days written notice. The corporation can terminate any agreement except:

- easements;
- restrictive covenants;
- exclusive possession agreements made under a bylaw;
- mutual use agreements among corporations;
- contracts for the supply of electricity or natural gas for a term of less than 5 years;
- agreements or leases for the development of an alternative or renewable energy system;
- agreements or leases for the provision of telecommunications services or facilities.

## Maintaining Records

The Regulation creates record keeping requirements for trustees who hold purchaser's deposits. Trustees must keep records of each trust account, including:

- the name of the purchaser;
- the amount of each deposit made into trust;
- the date of each deposit;
- the total amount of money currently held in trust;
- the amount of interest earned on money held in trust;
- a description of each disbursement made from money received or held in trust.

These records must be retained the entire time the deposit money is in the trust account, and for at least five years thereafter.

## Inspections of Developers' Records

The Act gives allows for the appointment of inspectors to conduct inspections of developer's business records. Inspectors may inspect any records required to be kept under the Act or the regulations, as well as any other records or documents that are relevant to the inspection, to ensure compliance with the legislation. This includes the authority for inspectors to enter the business premises of a developer to conduct an inspection, including inspecting, examining and copying books, records and other documents to determine if the legislation is being complied with.

## Investigating Complaints

Service Alberta is responsible for investigating violations of offence sections of the *Condominium Property Act* and its regulations. Investigations may be conducted in response to a complaint or if there are concerns about non-compliance following an inspection.

The following sections of the Act are defined as offence sections:



<b>Section</b>	<b>Description of offence</b>
10.1(1)	Failure of a developer to appoint an interim board and file names and addresses with the land titles office
12(1)	Failure of a developer to disclose required documents to a purchaser before selling or agreeing to sell a unit or proposed unit
12.2	Failure of a developer to include all required information in a purchase agreement
13(2)	Failure of a developer to refund deposits for a cancelled purchase within 15 days of receipt of the cancellation notice from the purchaser.
14(3)	Failure of a developer or trustee to hold all money received from a purchaser in trust until certificate of title is issued to the purchaser
14(4)	Failure of a developer or trustee to hold sufficient money in trust to pay for the cost of substantially completing the unit, when combined with any unpaid portion of the purchase price of the unit
14(5)	Failure of a developer or trustee to hold sufficient money in trust to complete a unit's share of the common property
14(6)	Failure of a developer to deposit money that is to be held in trust into a trust account within three days of receipt
14(7)	Failure of a developer or trustee to ensure trust money is kept on deposit in Alberta
14(7.1)	Failure of a developer or trustee to comply with requirements of the regulations for trust accounts
16(2)	A developer charging a purchaser more than one month's rent as a security deposit
21	Sale of a premises rented to a tenant as a conversion unit without registering a condominium plan or including registration of a condominium plan as a condition of the purchase agreement

The following section of the General Regulation is defined as an offence section, and comes into effect April 1, 2018:

<b>Section</b>	<b>Description of offence</b>
20.09(4)	Failure of a developer to refund the purchaser's deposit if the purchaser cancels due to the developer missing the occupancy date.

## **Enforcement**

If an investigation proves a contravention of an offence section, enforcement action can result. The amendments allow for more enforcement options, as the *Condominium Property Act* previously allowed only for a warning or a prosecution. An enforcement action for an offence under either the Act or the regulations may now include the following:

- A Director’s Order, which allows the Director of Condominiums to order a person to stop engaging in anything specified, or to take any measures specified in the order, in order to ensure violations cease,
- Undertakings, where a developer signs an agreement with the Director of Condominiums acknowledging a past violation and setting out the actions to prevent or remedy future violations,
- Administrative Penalties, where the Director of Condominiums may issue a penalty to a developer of up to \$100,000 where a contravention occurs,
- Prosecution, where the maximum fines have been set at \$25,000 for an individual or \$100,000 for a corporation, or three times the amount the individual or corporation received through the offence, whichever is greater. The time limit for commencing prosecutions is four years from the offence date.

A developer may appeal a Director’s Order or an administrative penalty by serving the Minister with a notice of appeal within 30 days after being notified of the order or penalty.

The Director of Condominiums must maintain a public record of undertakings, Director’s Orders, Court orders and administrative penalties.

## For more Information

The consumer tipsheet “*Buying a Condominium*” will be available to the public when the amendments come into force. The tipsheet contains information for purchasers about buying a new condominium unit or a converted unit from a developer, as well as information about purchasing a previously owned condominium unit. Developers will be able to refer purchasers to the website, or download a copy from the Service Alberta website at <http://www.servicealberta.gov.ab.ca/ConsumerTipsheets.cfm#housing> for duplication and distribution to purchasers.

### Queen’s Printer Bookstore

You may purchase Acts and regulations from the Queen’s Printer Bookstore. These are also free for you to download in “pdf” or “html” formats on the Queen’s Printer website at <http://www.qp.alberta.ca/>.

There, you can find the following statutes, regulations and orders in council that provide the source of information for this publication:

- Condominium Property Act, C-22 RSA 2000, available at [http://www.qp.alberta.ca/570.cfm?frm\\_isbn=9780779799008&search\\_by=link](http://www.qp.alberta.ca/570.cfm?frm_isbn=9780779799008&search_by=link)
- Condominium Property Amendment Act, 2014, available at [http://www.qp.alberta.ca/570.cfm?frm\\_isbn=9780779791255&search\\_by=link](http://www.qp.alberta.ca/570.cfm?frm_isbn=9780779791255&search_by=link)
- Condominium Property Regulation [http://www.qp.alberta.ca/570.cfm?frm\\_isbn=9780779793273&search\\_by=link](http://www.qp.alberta.ca/570.cfm?frm_isbn=9780779793273&search_by=link)
- New Home Buyer Protection Act [http://www.municipalaffairs.alberta.ca/home\\_warranties\\_acts\\_regulations](http://www.municipalaffairs.alberta.ca/home_warranties_acts_regulations)

- Orders in Council are the instrument by which the Lieutenant Governor in Council makes its orders. The Orders in Council (OC) that will bring the recent amendments into effect are located on the Queen's Printer website.

The OC bringing specific sections of the Condominium Property Amendment Act into force can be found at:

[http://www.qp.alberta.ca/documents/orders/Orders\\_in\\_Council/2017/1017/2017\\_315.pdf](http://www.qp.alberta.ca/documents/orders/Orders_in_Council/2017/1017/2017_315.pdf)

The OC amending the Condominium Property Regulation can be found at:

[http://www.qp.alberta.ca/documents/orders/Orders\\_in\\_Council/2017/1017/2017\\_316.pdf](http://www.qp.alberta.ca/documents/orders/Orders_in_Council/2017/1017/2017_316.pdf)

### **External Resources:**

**Condo Law for Albertans:** <http://www.condolawalberta.ca/>

(Published by the Centre for Public Legal Education of Alberta)

### **Approved Purchaser Protection Programs:**

- **Alberta New Home Warranty Program** 1-800-352-8240 [www.anhwp.com](http://www.anhwp.com)
- **Aviva Insurance Company of Canada** 1-800-363-6330 <https://www.avivacanada.com/>
- **The Guarantee Company of North America** 1-800-268-6617 [www.thegarantee.com](http://www.thegarantee.com)
- **Travelers Insurance Company of Canada** 1-800-555-9431 [www.travelerscanada.ca](http://www.travelerscanada.ca)

## Disclaimer

While Service Alberta has made extensive efforts to ensure this document is accurate, Service Alberta cannot warrant that the information in this sheet will be consistent with private legal advice, judicial decisions, nor that it will be constantly kept up to date, accurate, complete, reliable and error-free. Readers acknowledge their use of this document constitutes an agreement with the Government of Alberta that

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- It is the sole responsibility of all readers to ensure that activities described in this document comply with all applicable laws, regardless of whether or not this document correctly articulates the current state of applicable law; and
- All readers should refer to the *Condominium Property Act* (as amended) and the *Condominium Property Regulation* (as amended) for official legislative references.

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