CONSUMER PROTECTION IN THE CONDOMINIUM PURCHASE - THE PURCHASER'S PERSPECTIVE

by

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A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF
THE REQUIREMENTS FOR THE DEGREE OF
MASTER OF LAWS

in

THE FACULTY OF GRADUATE STUDIES

(Faculty of Law)

We accept this thesis as conforming to the required standard

THE UNIVERSITY OF BRITISH COLUMBIA

September 1987

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ABSTRACT

This thesis analyzes the information and legal protection provided to the Canadian condominium purchaser. A comparison is made as to the effectiveness of relevant legislation in Canadian jurisdictions and where deficiencies are perceived the thesis makes proposals for reform.
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One fact faced by the real estate purchaser, even the purchaser in a conventional subdivision, is that to some extent the real estate purchase is the last bastion of caveat emptor. While that doctrine has been whittled away in sale of goods, and trade practice legislation has come to protect the non-real estate purchaser from unfair business practices, for some reason the law has been inclined to leave the real estate transaction comparatively untouched. The rationale for the laissez-faire attitude is that the real estate purchaser is more sophisticated or in a better bargaining position that the purchaser of goods or services, or else that the extension of more consumer protection to the real estate transaction would be too costly.

Whether there is validity to the rationale or not, there are special features of the condominium purchase which might make consumer protection a more pressing need. Complicating factors in the condominium purchase arise from the interdependence inherent in the condominium scheme. The condominium owner owns "common property" or "common elements" and uses them jointly with the other owners, and this naturally necessitates some degree of co-operation and regulation. In order to maintain the common elements, financial contribution is necessary. The purchaser in a conventional subdivision naturally expects some intrusion of government - municipal, provincial, federal; but the condominium purchaser contends with another level - the
condominium corporation - which is charged with the administration of such a scheme.

The purchaser's relationship with the developer will usually end with the conveyance of a new house in a conventional subdivision - while the nature of a condominium development may dictate that the developer has a longer-term interest and involvement. In determining whether the condominium purchaser needs special legislation to protect him, one must consider what his expectations regarding the purchase are and whether the expectations are realistic.

It is submitted that the expectations of the typical residential condominium purchaser, in common with a purchaser in a conventional residential subdivision, include an acquisition which will provide him with affordable living, investment potential and more autonomy than a tenant. In addition, the condominium purchaser may expect use of common facilities which he might not be able to afford on his own. Factors which might tend to thwart the expectations of the residential condominium purchaser include his own ignorance about the nature, workings and financing of a condominium development, the failure of the developer to deliver the product expected and the impact that government by the condominium corporation can have on his life. Because defeat of purchaser expectations seems to emerge more obviously in the context of the residential condominium, and because the thrust of most existing consumer protection legislation has been to protect the non-business buyer, the purchaser who will be considered in this paper is the residential purchaser.
To overcome the difficulties at common law relating to common ownership and interdependence, legislation facilitating condominium development was introduced into most American and Canadian jurisdictions in the 1960's. That early legislation has come to be known as "first-generation" legislation; it was in the main enabling legislation. In all Canadian provinces except Quebec, the condominium statutes have a basic similarity (though terminology differs slightly). Each purchaser acquires a unit, which becomes his own, and in addition a share in the common property. The owners together comprise a condominium corporation, which is, in effect, a kind of private government. Management is performed by a board elected by the condominium corporation, and the laws are contained in a declaration and/or bylaws. Quebec's Civil Code, Title II, Ch. 3, s.1, Para 441-442 creates something similar to condominium ownership, but the legislation is quite different from that in effect in the other provinces. For that reason the Quebec legislation has not been considered in any depth in this paper.

Experience with condominium ownership facilitated by the first-generation legislation led to the recognition of certain problems inherent in the condominium scheme. The legislation initially treated the condominium developer like the developer of conventional real estate, ignoring the ongoing involvement which the developer could often have in the condominium project. The huge extent to which a condominium corporation could circumscribe the owners' freedom of action was also to some extent ignored in first-
generation legislation. The condominium statutes of Ontario, Prince Edward Island, Alberta and British Columbia bear more of the stamp of second-generation legislation, while the condominium statutes in the other provinces are somewhat basic in comparison. As a basis for comparison and evaluation of protection of condominium purchasers' expectations in the provinces this paper will consider the access of the purchaser to information about the project and the scope of that information; the purchaser's ability to participate in the making of condominium corporation decisions and how that might be affected by the power of the developer; the ways in which the autonomy of the purchaser can be eroded by the condominium corporation; and his avenues for legal action if his expectations are not met.
To say that the real estate purchase is the most important financial transaction most people enter into in their lives is trite but true. One suspects, however, that the average purchaser may spend less time researching a home purchase than he would on purchase of a car or a sweater, maybe because in the latter transactions he knows what questions to ask. The real estate purchase can, however, have serious risks, especially if the purchase is condominium, where relationships may present a set of problems that a majority of purchasers have never even considered. Because this is true the real estate purchaser and particularly the condominium purchaser, needs protection which he would not get if "caveat emptor" were to apply. This chapter will describe the type of protection the buyer of a Canadian condominium receives before his purchase, particularly the purchase of a newly developed condominium unit.
A. Information

Other than direct contact with the developer, his salesmen and employees, and performing an on-site inspection, the purchaser's information concerning a condominium purchase will generally come from a variety of sources including advertisements, a prospectus or disclosure statement in those jurisdictions which require a developer to file or provide one, material on file at a land title registry office, along with anything which the strata corporation is required to provide, and, of course, contact with the conveyancing lawyer. The municipality may be a source of information regarding building requirements and restrictions on use. Legislation aimed at ensuring that the purchaser receives complete and accurate information is, of course, premised on the belief that given full and correct information the purchaser will be capable of making the right decision about whether or not to purchase. Given a purchaser capable of making a proper decision the effectiveness of any legislated information requirement would depend on what information the purchaser will obtain, when he obtains it, and what the sanctions against providing incorrect or incomplete information are.
1. Advertising and Other Representations

A major influence on the purchaser's decision as to whether or not to buy will be pre-sale representations contained in advertising or statements made by the developer or his agent before or in the course of negotiations. It is not uncommon for verbal representations and even "hard copy" statements to be incomplete, or based on optimism rather than reality. How is the purchaser protected against false or misleading statements he relied on in entering into the contract?

There are a number of impediments at common law facing a purchaser who seeks to bring an action against a developer based on false or incomplete representations or promises made before the contract was entered into. Non-disclosure is not generally considered misrepresentation at common law and will not give a purchaser a cause of action against a developer who misleads him by silence. Any evidence as to pre-contractual promises will be subject to the parol evidence rule which excludes evidence of terms which add to or contradict the final written agreement, though evidence of misrepresentation is not excluded.

By far the most serious impediment is the exemption clause which forms part of most real estate contracts. The purchaser typically agrees that "there are no other representations, warranties, guarantees, promises or agreements other than those contained in this agreement", which would appear to rule out reliance on advertising or representations. However, if the pre-contractual statements
can be shown to be fraudulent, at common law neither the parol evidence rule nor the exemption clause would protect the vendor from a purchaser relying on them in a legal action. In addition, now according to Roberts v. Montex Development Corporation et al the force of both the parol evidence rule and the contractual exemption clause is subject to "inequality of bargaining power" or "inequality of capacity to obtain truthful information", and if the scales are unfairly tipped against the purchaser who is the subject of a false pre-contractual representation or warranty, he may be permitted to rely on a collateral warranty or negligent misrepresentation regardless.

The Roberts v. Montex Development case appears to be novel in Canada in its approach to striking down an exemption clause, but could be seen as an extension of the approach used by Denning M.R. in the case of Lloyd's Bank Ltd. v. Bundy. The latter case involved an attempt by a bank to enforce a guarantee against an unsophisticated farmer. While the majority in the Court of Appeal relieved the farmer from the effect of the guarantee on the grounds of "breach of a duty to take fiduciary care," Lord Denning in his judgment suggested that cases involving (inter alia) duress, unconscionable transactions or undue influence could be united under the general category of inequality of bargaining power, and the necessity to prove actual domination or wrong doing should be done away with.
Gathering all together, I would suggest that through all these instances there runs a single thread. They rest on "inequality of bargaining power." By virtue of it, the English law gives relief to one who, without independent advice, enters into a contract upon terms which are very unfair or transfers property for a consideration which is grossly inadequate, when his bargaining power is grievously impaired by reason of his own needs or desires, or by his own ignorance or infirmity, coupled with undue influences or pressures brought to bear on him by or for the benefit of the other. When I use the word "undue" I do not mean to suggest that the principle depends on proof of any wrongdoing. The one who stipulated for an unfair advantage may be moved solely by his own self-interest, unconscious of the distress he is bringing to the other. I have also avoided any reference to the will of the one being "dominated" or "overcome" by the other. One who is in extreme need may knowingly consent to a most improvident bargain, solely to relieve the straits in which he finds himself. Again, I do not mean to suggest that every transaction is saved by independent advice. But the absence of it may be fatal. With these explanations, I hope this principle will be found to reconcile the cases.

The fact of inequality of bargaining power has been referred to in subsequent English cases but only Denning M.R. appears to have relied on it as a ground for decision. In Levinson v. Patent Steam Carpet Cleaning Co. Ltd. customers whose carpets had been cleaned by the defendant sought to avoid the limitation of liability contained in an exemption clause. The majority in the Court of Appeal found for the customers on the basis that the clause properly construed did not negate liability for fundamental breach of contract and fundamental breach had occurred. Lord Denning overturned the exemption clause referring to a principle of unreasonableness. At p. 79 he states:
"In Gillespie Bros. & Co. Ltd. v. Roy Bowles Transport Ltd. [1973] Q.B. 400, 416, I suggested that an exemption or limitation clause should not be given effect if it was unreasonable, or if it would be unreasonable to apply it in the circumstances of the case. I see no reason why this should not be applied today, at any rate in contracts in standard forms where there is inequality of bargaining power."

He relied on the doctrine of fundamental breach in the alternative.

An additional limitation on the scope of limitation clauses is the rule established in Flight v. Booth, which could be seen as a form of the fundamental breach rule. There the subject of the purchase was leasehold property and the agreement of purchase and sale included a clause which said that

"if through any mistake the estate should be improperly described, or any error or misstatement be inserted in that particular, such error or misstatement should not vitiate the sale thereof, but the vendor or purchaser, as the case might happen, should pay or allow a proportionate value according to the average of the whole purchase - money as a compensation, either way."11

The agreement of sale indicated that all but "offensive" trades could be carried on on the premises, while it turned out that the lease to which the premises were subject prohibited many inoffensive trades. The question was whether the purchaser could rescind the agreement and recover his deposit or was subject to the clause which limited his remedy to compensation. Tindal C.J. stated:

"It is extremely difficult to lay down, from the decided cases, any certain definite rule which shall determine what misstatement or misdescription in the particulars shall justify a rescinding of the contract, and what shall be the found of compensation only. All the cases concur in this,
that where the mistatement is willful or designed, it amounts to fraud; and such fraud, upon general principles of law, avoids the contract altogether. But with respect to mistatements which stand clear of fraud, it is impossible to reconcile all the cases; some of them laying it down that no mistatements which originate in carelessness, however gross, shall avoid the contract, but shall form the subject of compensation only; whilst other cases lay down the rule, that a misdescription in a material point, although occasioned by negligence only, not by fraud, will vitiate the contract of sale. In this state of discrepancy between the decided cases, we think it is, at all events, a safe rule to adopt, that where the misdescription, although not proceeding from fraud, is in a material and substantial point, so far affecting the subject-matter of the contract that it may reasonably be supposed, that, but for such misdescription, the purchaser might never have entered into the contract at all, in such case the contract is avoided altogether, and the purchaser is not bound to resort to the clause of compensation.

There is little in the way of legislation to protect specifically the real estate consumer against deceptive advertising and other representations. Provinces deal with the general area of disclosure requirements and licencing of real estate brokers. Most provinces do have some legislation similar to British Columbia's Trade Practice Act protecting the purchaser in a consumer transaction against deceptive or misleading practices by a seller, and ruling out the application of exemption clauses. As with the B.C. Trade Practice Act, though, those statutes do not apply to real estate transactions. While the definitions in the Manitoba Trade Practices Inquiry Act are broad enough to allow consumers to complain about the use by anyone engaging in trade in Manitoba of "unfair, improper or misleading advertising or statements", there is no remedy for the
individual consumer who has been the victim. Likewise the false advertising provisions of the Combines Investigation Act apply to real estate sales, but the only sanctions are quasi-criminal.
2. Disclosure

Most jurisdictions across Canada have some legislation requiring the developer to disclose material facts concerning his development prior to sale. Recognizing that is unrealistic to expect the inexperienced purchaser to ask the right questions the statutes require that they be answered in a certain format. Rather than allowing the seller to hide behind hazily or selectively-remembered conversations, small print, and exemption clauses, the facts presented by the developer are there in print for the purchaser and public to see.

The only province which has a disclosure requirement relating to sale of real estate generally which requires not only that the developer provide prescribed information to a purchaser but also that a government official oversee the disclosure process is B.C. The British Columbia Real Estate Act\(^{16}\) contains a disclosure requirement which applies to the developer of "subdivided land" in general, including real estate generally and in particular strata lots and time-share interests.\(^{17}\) The definition of "subdivided land" as it relates to strata lots includes a sale of 5 or more strata lots.\(^{18}\) Certain types of transactions involving
the more sophisticated investor are exempted. Until 1985 the developer of subdivided (with certain exemptions) land had to submit a prospectus containing "full, true and plain disclosure" in prescribed form to the Superintendent of Insurance. Before the prospectus could be distributed to prospective purchasers it had to be examined and approved by the superintendent who had broad powers to cause investigations to be made, reject the prospectus where the information or the development itself was not satisfactory, order the developer to suspend sales where he had not complied or post a bond to back up his assurances.

The trend away from government paternalism of the 1970's towards deregulation and restraint of the mid 1980's resulted in amendments to the B.C. Real Estate Act which came into effect in December of 1985. The Superintendent can now permit a developer to file a "disclosure statement" instead of a prospectus, the difference being that the disclosure statement will be available for public inspection, but will not be reviewed by the Superintendent's staff as a matter of routine, and the developer can begin sales as soon as the disclosure statement has been filed, there being no need for prior approval. The Superintendent's office is
to be engaged in random reviews of filings to ensure that they do provide full, true and plain disclosure. It retains its investigatory powers, and the Superintendent has the power to issue a cease-selling order for non-compliance. The policy statement\textsuperscript{23} issued by the Superintendent relative to the amendments indicates that he will permit most developers to submit a disclosure statement instead of a prospectus unless the subdivided land is outside the Province, the offering pertains to time share interests, or the Superintendent considers it to be in the public interest to require a prospectus to be filed. The Superintendent will require a developer to file a prospectus in the public interest where "on an office review of after a complaint, he has determined that a particular developer is failing to meet the disclosure requirements of the Real Estate Act."\textsuperscript{24}

Ontario, Alberta and Prince Edward Island have special disclosure requirements relating to the sale of condominiums in those provinces. Under the Ontario Condominium Act\textsuperscript{25} the developer, or "declarant" must provide every purchaser with a disclosure statement and material amendments. The requirements as to what must be provided are set out in S. 52(6) and S.52(7).\textsuperscript{26} The information is not filed nor is it investigated by any
government official as it might be in B.C. The residential condominium purchaser in Alberta will receive similar disclosure under S.9 of the Alberta Condominium Property Act, although not in nearly as much detail as he would if he were buying in Ontario. Section 31 of the Prince Edward Condominium Act also requires detailed disclosure to purchasers of condominiums in that province.

In Saskatchewan, Manitoba and Newfoundland the necessity for disclosure in sale of real estate applies only where a purchaser in those respective provinces is purchasing real estate located outside their boundaries, presumably the reasoning being that a purchaser has freer access to a real estate purchase within provincial boundaries and thus can be expected to educate himself as regards on in-province purchase. In those provinces the seller must file a prospectus with the Superintendent (in Saskatchewan and Newfoundland) or registrar (in Manitoba) and only after the prospectus has been accepted can sales begin. The prospectuses must be updated annually. Alberta and Ontario have similar provisions relating to sales of real estate located outside those provinces, while Quebec, Nova Scotia and New Brunswick have no pre-contract disclosure requirements at all.
In terms of the content of the disclosure, the requirements of the Ontario Condominium Act are the most rigorous. In terms of the financial details to be revealed the "declarant" must include, under S.52(6)(e) "a budget statement for the one year period immediately following the registration of the declaration and the description", including those matters set out in S.52(7)

a) the common expenses
b) the proposed amount of each expense:
c) particulars of the type, frequency and level of the services to be provided;
d) the projected monthly common expense contribution for each type of unit;

s.52(7) e) a statement of the portion of the common expense to be paid into a reserve fund;
f) a statement of the assumed inflation factor;
g) a statement of any judgements against the corporation, the status of any pending lawsuits to which the corporation is a party and the status of any pending lawsuits material to the property of which the declarant or proposed declarant has actual knowledge.
h) any current or expected fees or charges to be paid by unit owners or any of them for the use of the common elements or part thereof and other facilities related to the property;
i) any services not included in the budget that the declarant or proposed declarant provides, or expenses that he pays and that might reasonably be expected to become, at any subsequent time, a common expense and the projected common expense contribution attributable to each of those services or expenses for each type of unit;
j) the amounts in all reserve funds; and
k) any other matters required by the regulations to be disclosed.

In addition to a general description of the development under S.52(6)(d) the developer is required to provide

   d) a brief narrative description of the significant features of the existing or proposed declaration, by-laws and rules governing the use of common elements and units, and of any contracts or leases that may be subject to termination or expiration under section 39;

and under S.52(6)(f)

   f) where construction of amenities is not completed, a schedule of the proposed commencement and completion dates; and

Section 31 of the Prince Edward Island Condominium Act is similar to Ontario's S.52(6) and S.52(7), after which it appears to be patterned, though the budget requirements of S.52(7)(f) through (k) inclusive are not included in the Prince Edward Island Act. In comparison, the Alberta requirements appear to be a bit skimpy. The Alberta Condominium Property Act S.93 does require the developer to deliver to a purchaser of a residential unit copies of purchase agreements, arrangement agreements, recreational agreements and drawings showing the construction as it will exist when the developer has fulfilled his obligations, the only financial information required is under S.10(c).

"the amount or estimated amount of the monthly unit contributions in respect of the residential unit."
A disclosure statement filed under the B.C. Real Estate Act will contain the greatest variety of information comparatively. The developer must include details of how services will be provided, dates of commencement and completion of construction, existing and proposed management and recreational agreements and description of any construction and equipment warranties. While the developer must include particulars of the estimated operating budget and how the budget will be allocated there is no detail, as in the Ontario Condominium Act, as to what must be included. (Nor is any particular detail required under s. 128(4) of the B.C. Condominium Act.) Unique to B.C. is the requirement under S.1(2)

of the Condominium Act that the superintendent must approve the schedule of unit entitlement before registered, under S.27(1) that in any strata plan that is exclusively residential the superintendent must approve any deviation from pro forma bylaws to go into effect on registration of the plan, and under S.31(2) that the owner developer must deliver both to the superintendent and to all purchasers a rental disclosure statement disclosing lots he intends to lease and the length of time he intends to lease them.

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Because the disclosure requirement is meant to give the purchaser the proper basis on which to make a decision to purchase the timing of the disclosure is very important. The Ontario Condominium Act does not say directly that the developer must provide the information required by S.52(6) and (7) before the purchaser enters into an agreement to buy, but perhaps that could be inferred because of S.52(1) which renders an agreement of purchase and sale entered into by a "declarant" with a purchaser not binding until a copy of the current disclosure statement with all material amendments thereto has been delivered, and S.55 which makes it an offence not to comply with S.52(5), (6), and (7). Those sections seem to show clearly that the intention is to make the disclosure compulsory at the time of the contract of sale. Section 52(1) does seem to leave open the possibility that even if disclosure was not made at the time the contract with the purchaser was entered into, the contract would become binding once proper disclosure was made.

The timing of the Prince Edward Island disclosure is clearer. The Condominium Act section 31(1) says that an agreement of purchase and sale entered into by a declarant of a unit for residential purposes is not binding on the purchaser unless the declarant has
previously delivered a copy of the information required. Presumably "previously" means that the declarant must have delivered the information previous to the agreement, not previous to the agreement becoming binding. As with the Ontario provisions, whether or not disclosure is mandatory can only be inferred.

The disclosure requirement in the Alberta Condominium Property Act clearly is mandatory. The developer may not sell a residential unit unless he has delivered to the purchaser a copy of the documents prescribed. Under S.50(7) of the B.C. Real Estate Act the developer must deliver the prospectus or disclosure statement to the prospective purchaser before or at the time the contract is entered into and must obtain from the prospective purchaser a receipt acknowledging that he has been afforded the opportunity to read it.

What is the effect of non-disclosure or inaccurate disclosure on the purchaser and the developer? In Ontario the agreement of purchase and sale is not binding on the purchaser until the disclosure statement has been delivered. Under S.52(2) the purchaser who has not received delivery of a deed to or transfer of the unit may rescind the agreement or purchase and sale within 10 days of receiving the disclosure statement.
The section appears to leave open the question of the rights of a purchaser who receives no disclosure statement — will his ability under S.52(1) to declare the agreement of purchase and sale not binding end on delivery of a deed or transfer? Section 55 makes any person who knowingly contravenes S.52(5), (6), and (7) of the Act guilty of an offence and liable to a fine.

The Prince Edward Island Condominium Act says that the agreement of purchase and sale is not binding on the purchaser unless the declarant has previously delivered to the purchaser a copy of the required documents. The required documents include the declaration and description filed at the Registry office. So as to allow for the situation where a developer is entering into contracts of sale before actually registering these documents, a "proposed declarant" must follow up his initial disclosure with confirmation that the registered documents are identical in all material respects to the ones previously delivered. This confirmation must be delivered to the purchaser at least 10 days before delivering a deed or transfer. The Act does not say that the agreement is not binding on the purchaser without this confirmation. As with the Ontario Act the
Prince Edward Island Condominium Act leaves open the question of how long the purchaser's right under S.31(1) to declare the agreement for purchase and sale not binding extends where the disclosure has been given. There is no rescission period similar to the one in the Ontario Act.

In Alberta S.9(3) gives the purchaser of a residential unit the right to rescind a purchase agreement within 10 days of execution unless the required disclosure was made to the purchaser at least 10 days prior to execution of the agreement. Notification of this right must be displayed prominently on the purchase agreement. A person who fails to comply with S.9(1) is guilty of an offence and liable to a fine, and according to S.7(3) each member of the board who is knowingly party to the failure is guilty of an offence and liable to a fine.

Unlike a purchaser in Ontario and Alberta, the purchaser of a condominium in B.C. has no statutory right of rescission from the time the disclosure is provided, but according to S.62 no agreement to purchase subdivided land is enforceable against a purchaser where the requirements have not been complied with. (Under S.63 the purchaser of subdivided land
outside the province has one year from the date of the contract to rescind where the disclosure requirements have not been complied with.) Section 60 makes any person who fails to comply with the disclosure provisions guilty of an offence, but introduces the defence that non-compliance was due to an honest mistake or immaterial.

The B.C. Case of Chambers v. Pennyfarthing Development Corp. and Turbo Resources Limited considered the question of what the Act means when it says that an agreement to purchase subdivided land is "not enforceable" against the purchaser where the disclosure requirements have not been followed. In that case the developer selling the strata lot in a building to be constructed failed to file a prospectus before entering into a contract with a purchaser. The contract was entered into in May of 1981. Early in 1982 the purchaser decided not to proceed with his purchase. The purchaser brought an action to recover two instalments totalling $25,300 paid under the agreement, claiming that the agreement was unenforceable under the Real Estate Act. The purchaser succeeded at trial.

When the case reached the B.C. Court of Appeal one of the developer's arguments was that S.62, which
renders a contract unenforceable for non-compliance, applies only to executory transactions that where the contract has been executed it is too late for the purchaser to exercise his option to declare the contract void. In assessing the purchaser's rights Taggart J.A. considered (at p. 169) the effect of S.63 in comparison:

"It was suggested the legislature had in mind the greater practical difficulties confronting a purchaser of land outside the province in inspecting and assessing the merits of his purchase. Consequently S.63(1) give the purchaser of land outside the province a full year from the making of the contract within which to resile from the contract where the vendor has not complied with the obligations imposed on it by Pt. 2 of the Act.

In contrast to the purchaser of subdivided land outside the province, the purchaser of subdivided land within the province must be presumed to have freer access to the land which he has purchased and a correspondingly more restricted right to repudiate his promise. It is suggested that the implied limitation upon the right to resile conferred on the purchaser of subdivided land within the province is that s.62 is restricted in its use of purchasers under contracts which remain executory.

Counsel for the appellants pointed to the use of the words "promise or agreement to purchase" in s.62 in comparison with the words "contract to purchase" used in s.63(1). Our attention was also drawn to the provision in s.63(1) which provides that the purchaser may only exercise rights under that subsection if he continues to be the beneficial owner of the land. It was said these differences support the submission of the appellants..."

He continued on p. 171

"The first question which must be resolved is whether the legislature intended s.62 to have
application only to executory contracts. When SS.62 and 63 are considered together it seems inconsistent to impose a limit of one year on s.63 transactions (and that whether they are executed or executory) but leave unlimited as to time the availability of the relief provided purchasers by s.62."

After a consideration of the authorities on illegal, void and voidable contracts he concludes (at p. 173) that

"...the contract in this case falls into that distinct class of contracts which are not void or voidable but merely unenforceable. Section 62, in my opinion, must have application only to executory contracts for it a contract has been executed there is nothing to enforce. That conclusion is the more satisfactory because it tends to bring s.62 into some harmony with s.63."

Taggart J.A. then considered whether the purchaser's contract had been executed and concluded that it had not.

"From the letters of the 16th and 22nd February and 7th March 1982 it will be apparent that much remained to be done before the contract of purchase could be closed. The document brief referred to in the 7th March letter included the information memorandum, a co-owners and development agreement, a rental management agreement, a form of mortgage contract with Sterling Trust Corporation and related assignment and assumption agreements. It is apparent from those documents that the respondent had the option of being either an owner-occupier of his unit or an investor. If he close to be the latter, he would rent the unit and would be subject to the rental management agreement.

The respondent had not decided which course he would pursue. Indeed, except for the information memorandum it iunld seen the documents in the
document brief at the time when he consulted his solicitor and gvoir the letter of the 9th March 1982 to be sent to the appellants.

The circumstances of this case are substantially different from those in Redican v. Nesbitt, supra. There, as Anglin J said at p. 153:

... the transaction was, nevertheless, intended to be closed and the contract completely executed so far as the purchasers were concerned by their taking of the deed and the keys and handing over the cheque. They had obtained the full consideration for which they contracted and, if the vendor saw fit to accept the cheque they tendered in payment in lieu of cash, they should not be heard to say that the contract had not been fully executed.

In the case at bar the parties were far from closing the transaction when the respondent, through his solicitor, advised the appellants he did not intend to complete the transaction and sought the return of the payments he had made.

In my opinion the contract in the case at bar remained executory and the respondent is entitled to rely on s.62.

Taggart J.A. dismissed the appeal with Carruthers J.A. concurring and Esson J.A. dissenting. Leave to appeal to the Supreme Court of Canada was denied.

When s.62 of the B.C. Real Estate Act says that an agreement to purchase subdivided land is unenforceable against the purchaser where the developer has not complied with the disclosure requirement, it therefore means that the purchaser can escape from the agreement and have any payment returned to him where the contract is
still executory. The same interpretation might logically be applied to s.52(1) of the Ontario Condominium Act and s.31(1) of the Prince Edward Island Condominium Act, meaning that the purchaser's right under those Acts to declare the contracts not binding where the disclosure statement has not been delivered ends when the contract has been executed.

What is the position of a purchaser who has been provided with a statement which is inaccurate or incomplete? Section 52(5) of the Ontario Condominium Act makes the declarant liable in damages for loss sustained as a result of reliance on a disclosure statement which "contains any material statement or information that is false, deceptive or misleading or fails to contain any material statement or information."

In Benner v. HLS Developments Ltd. the plaintiff had agreed to purchase a residential condominium unit from the defendant who has supplied him with a disclosure statement required by s.52 of the Ontario Condominium Act. He later decided not to complete the purchase and brought an action for a declaration that the agreement of purchase and sale was not binding on him, and asked for return of his deposit, claiming that the disclosure statement he had received was inadequate.
He claimed that details concerning recreational facilities, parking facilities, and budget required by s.52(6) and (7) had been omitted.

Carruthers J., observed that the plaintiff did not fail to complete the transaction for any reason relevant to the issues raised in the action, and that the defendant had endeavoured to comply with the Act. Any omission, had there been one, would only be with respect to the letter of the provisions, and not their spirit. He said (at p. 246) nonetheless, that:

"The Condominium Act provides that a person in the position of Maynard, that is, one who has agreed to purchase a residential condominium unit, may rescind such an agreement 10 days after receiving the disclosure statement. The effect of this provision of the Act is that the agreement is not firm until this 10-day period has elapsed. As well, and of greater significance here, is that this right to rescind remains outstanding until the vendor provides a disclosure statement which complies with the provisions of the Act. Accordingly, as I have noted above, in the absence of such a disclosure statement, Maynard can elect to rescind the agreement at any time. The fact that he did not purport to do so within 10 days of his receipt of a form of disclosure statement offered by the defendant, as is the case here, is of no moment. If a disclosure statement is found wanting so that, in effect, it is not a disclosure statement as required by the provisions of the Condominium Act, then a purchaser is at no time required to complete the transaction in connection with which it has been given."

He then decided against what standard the sufficiency of the standard must be weighed.
"In deciding whether a proffered disclosure statement complies with the provisions of s.52, the court is to employ an objective standard. As counsel for Maynard said in argument, that standard is what a reasonable man in an Ontario community would think about its sufficiency. The person to whom it is given has to be able to determine what are the essential elements of what he has agreed to purchase, as the Condominium Act requires them to be given. The purpose of the relevant provisions of the Condominium Act is to permit the purchaser to be able to make an informed decision as to whether to elect to rescind or affirm the outstanding agreement of purchase and sale. In my opinion, the sufficiency or otherwise of a disclosure statement must, as well, be judged on the basis of the materiality of its content. the absence of something not material should not, in itself, in my opinion, permit a purchaser to avoid the completion of an otherwise enforceable agreement of purchase and sale. .. " (p. 246)

Carruthers J. held that the statutory requirements had been complied with and that the purchaser could not avoid the agreement and get his deposit back.

When he says at p. 246 that in the absence of the disclosure statement the purchaser "... can elect to rescind the agreement at any time ..." and that if the disclosure statement is found wanting "... then a purchaser is at no time required to complete the transaction in connection with which it has been given ...", Carruthers J. may seem to be suggesting that the purchasers right to rescind extends beyond execution of the contract. This would seem to conflict with the decision of the B.C. Court of Appeal in Chambers v. Pennyfarthing Development Corp. and Turbo Resources

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Limited that where the developer neglects to provide disclosure required by the B.C. Real Estate Act the right to avoid the agreement ends when the agreement has been executed. Carruthers, J. appears to modify those statements on p. 247, however, when he states that:

"Counsel for the defendant relies, in part, upon s.52(5). In my opinion, it seems to apply to a purchaser who has completed a transaction of purchase and sale of a residential condominium unit and later discovers that the disclosure statement received by him in connection therewith is wanting in some material matter required by the provisions of s.52. I think that particular subsection intends that, after closing, a purchaser is able to obtain damages due to a failure of the disclosure statement to contain some material information or statement. The fact that that situation is recognized does not, in my opinion, permit an owner who has given a disclosure statement lacking in some material information or statement to compel a purchaser, who was aware of that fact, to close.

He seems to say, then, that if disclosure is insufficient, the purchaser can avoid the agreement before closing; but that after closing his remedy would be damages under s.52(5). This does, though, leave open the question of whether the purchaser can rescind after closing where no disclosure statement was provided, and if so, for how long.

There is no provision corresponding to s.52(5) of the Ontario Condominium Act in the Prince Edward Island Act so presumably in order to obtain a remedy for a
misleading statement the purchaser would have to rely on common law misrepresentation, but whether he could rely on this to obtain a remedy for a material non-disclosure is doubtful. Likewise the Alberta Condominium Property Act contains no remedy for misleading disclosure or non-disclosure, but there are sanctions against the developer for non-disclosure under the offence section (s.71).59

The B.C. Real Estate Act gives the strongest protection to a purchaser who has been subjected to false disclosure or non-disclosure. Section 5960 says that a purchaser is deemed to have relied on the prospectus (or disclosure statement) whether a purchaser has received it or not, and if there is any material false statement the developer and its directors are liable to compensate a person for loss or damage sustained. There are certain exemptions for liability which apply if the false statement was made innocently. What is unique about these provisions is that the purchaser is "deemed" to have relied on the disclosure whether he actually did or not, which might bypass one hurdle in bringing a legal action. The question would remain, however, as to what loss or damage the purchaser

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could say he "sustained" unless he could show that he
did, in fact, rely on the disclosure. Surely he would
have to show that his damage was sustained as a result
of the disclosure.
3. **Registry Requirements**

There are two basic schemes for registration of condominiums in the provinces of Canada. In some provinces the title to the condominiums is created by filing a plan showing land, outline of buildings and identifying the common property and strata lots. The plan may have to be accompanied by some peripheral documentation. In other jurisdictions the information filed will be much more extensive. A declaration setting out the basis of the development may include such grounds as "specification of common expenses; provisions respecting the occupation and use of the units and common elements; provisions restricting gifts, leases and sales of the units and common interests; a specification of duties of the corporation consistent with its objects; a specification of any allocation of the obligations to repair and to maintain the units and common elements. Typically the declaration can be amended only with the consent of all owners, or by order of the Court. In addition, a plan or description filed at the Registry will show not only the outline of the lots and common property but also structural plan of buildings and servicing and may require that verification be provided that the buildings are as built. The information required will be a matter of public record and available to the purchaser before he
enters into his contract to purchase, unless the developer has not yet filed his strata plan, in which case it will be available to the purchaser before he takes title.

B.C., Alberta and Saskatchewan condominiums are created by filing a plan as described above. The plan will describe the dimensions of the units and of the common property. Under s.53 of the B.C. Condominium Act the developer may designate areas for the exclusive use of some owners and those will appear as limited common property on the plan, or the condominium corporation can do this subsequently by special resolution in which case the particulars will be shown on a sketch map. Under the Alberta Condominium Property Act s. 41 if its bylaws permit the condominium corporation can lease common property to an owner permitting him to exercise exclusive possession in respect of it, and under s.6 the plan will reflect any areas so leased or which may be so leased. Use of common property may be limited to certain owners by bylaw under clause 3(f) of Schedule 4 of the Saskatchewan Condominium Property Act, but that fact will not appear on the condominium plan.
Schedules showing unit entitlement - the interest of each unit in the common property - must accompany the plans. According to s.1(3) of the B.C. Condominium Act unit entitlement is to be determined on the basis of the proportion of the square footage of the unit bears to the units as a whole, unless the Superintendent of Insurance approves another formula. Under s.6(g) of the Alberta Condominium Property Act and s.7(1)(f) of the Saskatchewan Property Act the "unit factor" will be set out on the plan. In B.C., Alberta and Saskatchewan the unit entitlement or unit factor determines the amount of the owner's contributions towards maintenance.

Any amendments to standard form bylaws must be filed before they will take effect (in Saskatchewan this only applies to "Schedule A" bylaws). In addition, in B.C., the developer must file a schedule showing the share of each owner on destruction, and where the strata plan is not residential or is partially residential, a schedule showing the number of votes allocated to each strata lot. Also, where the development is phased, the developer must file a Form E under s.77(2) of the B.C. Condominium Act.

In Manitoba the developer files a declaration which, under s.5(1) must contain

5(1) A declaration shall not be registered unless
(a) title to the land described therein in registered under The Real Property Act;
(b) It is executed by the owner or lessee of the property;
(c) it has been approved as to form by the district registrar;
(d) it contains the legal description of the land that is the subject of the declaration;
(e) it contains the statement of intention that the land or the leasehold interest therein, and interests appurtenant to the land described in the plan be governed by this Act;
(f) it contains the consent of all persons having registered encumbrances against the land or interests appurtenant to the land described in the plan;
(g) it contains a statement expressed in percentages allocated to the units of the proportions in which the owners are to contribute to the common expenses and to share in the common interests;
(h) it contains a statement expressed in percentages allocated to the units, of the proportions in which the owners are to have voting rights in the corporation; and
(i) it contains an address for service.

but in addition, according to s.5(2), may contain:

5 (2) In addition to the matters mentioned in subsection (1), a declaration may contain:
(a) a specification of common expenses, or
(b) a specification of any parts of the common elements that are to be used by the owners of one or more designated units and not by all the owners; or
(c) subject to subsection (3), provisions respecting the occupation and use of the units and common elements; or
(d) subject to subsection (3), provisions restricting gifts, leases and sales of the units and common interests; or
(e) a specification of the number, qualification, nomination, election, term of office, compensation and removal of members of the board, and the meetings, quorum, functions and officers of the board; or
(f) a specification of duties of the corporation consistent with its objects; or
(g) a specification of the majority required to make by-laws of the corporation; or
(h) provisions regulating the assessment and collection of contributions towards the common expenses; or

(i) provisions respecting the priority of a lien for unpaid assessment; or

(j) a specification of the majority required to make substantial changes in the common elements and the assets of the corporation; or

(k) a specification of any provision requiring the corporation to purchase the units and common interests of any owners who dissented after a substantial addition, alteration or improvement to, or renovation of, the common elements has been made or after the assets of the corporation have been substantially changed; or

(l) a specification of any allocation of the obligations to repair and to maintain the units and common elements; or

(m) a specification of the percentage of substantial damage to the buildings and a specification of the majority required to authorize repairs under section 19; or

(n) a specification of the majority required for a sale of the property or a part of the common elements; or

(o) a specification of the majority required for the termination of the government of the property under this Act; or

(p) any other matters concerning the property; or

any of all such matters.

Under s.5(4) the declaration can be amended "... only with the written consent of all owners, and all persons having registered encumbrances against the units and common interests."67

In addition, s.61(1) says the developer must file a plan.

6 (1) A plan shall delineate the perimeter of the horizontal surface of the land, and the perimeter of the buildings in relation thereto, and shall contain:
(a) structural plans of the buildings;
(b) a specification of the boundaries of each unit by reference to the buildings;
(c) diagrams showing the shape and dimensions of each unit and the approximate location of each unit in relation to the other units and the buildings;
(d) a certificate of a land surveyor certifying that he was present at and personally superintended the survey represented by the plan, and that they survey and plan are correct;
(e) a certificate of an architect certifying that the buildings have been constructed and that the diagrams of the units are substantially accurate and substantially in accordance with the structural plans; and
(f) a description of any interest appurtenant to the land that is included in the property.

There is no requirement that the plan show location of services. Under s.6(3) the plan may be amended only with the written consent of all owners and all persons having registered encumbrances against the units and common interests.

The declaration required under s.369 of the Ontario Condominium Act follows a scheme similar to the declaration in the Manitoba Condominium Act, expect that much of what can be included under s.5(2) of the Manitoba Act, for instance, s.5(2)(g), (i), (j), (k), (m), (n), and (o) are all matters which are covered in the provisions of the Ontario Act itself and therefore cannot be altered. The requirements of the description under s.471 are almost identical to those of Manitoba's plan. The declaration and plan in Newfoundland will
be very similar to the declaration and descriptions in Ontario; while the declarations and descriptions in Nova Scotia\textsuperscript{73} and New Brunswick\textsuperscript{74} will be very similar to the declaration and plan in Manitoba. The Prince Edward Island Condominium Act requires a declaration and description similar to the Manitoba requirement, but much of what the Manitoba declaration "may" include "shall" be included in the declaration in Prince Edward Island.\textsuperscript{75} In all the provinces mentioned bylaws must be registered to be effective.\textsuperscript{76}
From the Strata Corporation

Section 19(1)(e) of the Nova Scotia Condominium Act requires the Strata Corporation to certify, on application of an owner or purchaser, the amount of the assessments pertaining to the strata lot and whether or not the amounts have been paid, and deeming the certificate to be conclusive proof of the matters contained in it. Unpaid assessments for a lien against the strata lot, and so this information is part of a proper title search.

19(1)(e) on the application of an owner or a purchaser of a unit and common interest, shall certify

(i) the amount of any assessment and accounts owing by the owner to the corporation, and for which the corporation has a lien or right of lien against the unit and common interest of the owner;

(ii) the manner in which the assessment and accounts are payable; and

(iii) the extent to which the assessment and account have been paid by the owner;

and in favour of any person dealing with that owner, the certificate is conclusive of the matters certified therein.

Halifax Condominium Corp. v. McDermid 77 involved an "estoppel certificate" issued under the Nova Scotia Condominium Property Act. On July 29, 1980 the condominium corporation resolved to borrow funds to repair windows and shingles. On October 3, 1980 the
condominium corporation issued to the McDermaids who were purchasing a strata unit as estoppel certificate indicating the state of the contingency and reserve fund and the monthly condominium fees. The resolution authorizing the borrowing was not disclosed. When the condominium corporation subsequently assessed the McDermaids $1500 for their share of the repair work, the McDermaids refused to pay on the grounds that under s.9(12) of the Act the condominium corporation was obliged to disclose an owner's position with regard to "assessments", that disclosure of the amount was not made, and that the estoppel certificate issued was binding on the corporation. The corporation's position was that no assessment had been made at the time the estoppel certificate was issued and that at the date it was issued it was correct. Glube, C.J., interpreted "assessment" to mean "the determination of the amount of taxation to be paid", "including, on the facts of this case, where a decision has been made to incur a liability on a formal basis but notice of assessment has not been prepared." (p. 259) The matter should have been included in the certificate and because it was not, the corporation was estopped from claiming the amount. The information required to be disclosed, therefore, goes further than just assessments in arrears.
Halifax Condominium Corp. v. McDermaid was referred to in the Ontario case of Lucas v. Duro and Shea. There the condominium corporation issued an estoppel certificate which did not reflect that the corporation's board of directors were aware of the deteriorating condition of the roof and the necessity for repairs at the time the certificate was issued. After closing the plaintiffs were notified by the corporation that they were required to pay $2,210 as their share of a special assessment that had been levied to cover the cost of repairs to the condominium roof. The estoppel certificate had been issued to the plaintiffs' law firm and not to the plaintiffs as purchasers. The plaintiffs claimed that had the estoppel certificate been issued to them as purchasers the corporation would have been unable to collect the special assessment from them. (See s.32(8) Appendix G).

He observes:

The statute and the regulations make it clear that the estoppel certificate only binds the corporation with respect to the person requesting the certificate. The grammar may be faulty, but the intent is manifest. According to the principles of statutory interpretation, I am obliged to give effect to the clear unambiguous wording of the statute and the regulations passed thereunder.

In the case of Halifax Country Condo. Corp. No. 5 Cowie Hill v. McDermaid (1982), 55 N.S.R. (2d) 414, 24 R.P.R. 248, 138 D.L.R. (3d) 356, 114 A.P.R. 414, a decision of Madame Justice C. Glube of the Nova Scotia Supreme Court Trial Division the condominium was not
successful in obtaining a declaration ordering the unit owner to pay the special levy. In that case, the corporation had approved a motion to borrow funds to finance repairs and a borrowing resolution had been executed prior to the issuance of the estoppel certificate. The estoppel certificate did not contain any reference to any special assessment which would be levied against the unit owners. The Ontario Act and regulations appear to be much broader in scope than the Nova Scotia Condominium Act, S.N.S. 1970-71, c. 12 Madame Justic Glube held that since the amount claimed was not referred to in the estoppel certificate, then the plaintiff corporation's claim was estopped.

In the instant case, I find that the purchasers were unable to rely on the estoppel certificate and on the protection set out in s.32(8) of the Condominium Act when the special levy was assessed against them.

British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Prince Edward Island all have comparable provisions, while Newfoundland and New Brunswick do not. In New Brunswick it could be argued that the purchaser does not need such a certificate because under s.1380 the lien for unpaid assessments arises only upon registration of a notice of lien, so the registry would give the purchaser access to the most important information. In Newfoundland, however, the lien does arise on non-payment and not just on registration.

In addition to information about assessments and arrears the B.C. Condominium Act requires the strata corporation to certify, on request, other amounts owing by an owner for repairs to his strata lot, insurance and
fines as well as

s.36(1) e) the amount, if any, by which the expenses of the strata corporation for the current fiscal year are expected to exceed the expenses budgeted for the fiscal year;
f) the amount of the contingency reserve fund;
g) that there are no amendments to the bylaws not filed in the land title office other than those certified;
h) that no notices have been given for a unanimous or special resolution that has not been voted on, other than those certified; and
i) that there are no pending proceedings against the corporation of which it is aware other than those certified.

The information to be provided under s.32(8) of the Ontario Act is very similar.
FORM 18

Certificate # ...........

Condominium Act

CERTIFICATE

(under subsection 32 (8) of the Condominium Act)

Name of Condominium Corporation

Current Mailing Address:

Current Address for Service:

(herinafter referred to as the "Corporation")

The Corporation hereby certifies that as of the date hereof:

1. The owner of unit ............. level ............. (suite ............. address .........................) of (identification of Condominium plan), registered in the Land Registry Office for the Land Titles

(or Registry) Division of ......................... is not in default in the payment of common expenses;

OR

The owner ......................... is in default in the payment of common expenses in the amount of $ ............. (if applicable: and a notice of lien has been registered against this unit);

2. The amount of $ ............. in prepaid common expenses stands to the credit of the said owner in the corporation's record (if applicable);

3. A payment on account of common expenses of $ ............. is due on (next due date) for the period (date) to (date);

4. The current budget (a copy of which is attached hereto) is accurate and may result in a surplus of $ ............. or may result in a deficit of $ .............

(strike out where not applicable)

5. The corporation's reserve fund(s) amounts to $ ............. as of ......................... (date)

6. The Corporation has no knowledge of any circumstances that may result in an increase in the common expenses for the said unit; (where applicable add: except (here give particulars of any potential increase including any special assessment and the reason for it));

7. The Corporation is not presently a party to any legal action (where applicable add: except (here give brief particulars of any action to which the Corporation is a party));

8. The Corporation is (is not) presently considering any substantial addition, alteration or improvement to or renovation of the common elements or any substantial change in the assets of the corporation (give particulars of the proposed substantial change);

9. The Corporation has secured all policies of insurance that are required under the provisions of the Condominium Act;

10. The property manager is. .................................................................

(full name, address and telephone number)
In Alberta the strata corporation also has an obligation to provide additional information, although the requirements are quite different from those in the B.C. Act. On the written request of an owner, purchaser or mortagee of a unit the corporation shall, within 20 days of receiving that request, provide to the person making the request one or more of the following as requested by that person.

a) a statement setting forth the amount of any contribution due and payable in respect of a unit,

b) the particulars of

i) any action commenced against the corporation and served on the corporation,

ii) any unsatisfied judgment or order for which the corporation is liable, and

iii) any written demand made on the corporation for an amount in excess of $5000 that, if not met, may result in an action being brought against the corporation;

c) the particulars of or a copy of any subsisting management agreement;

d) the particulars of or a copy of any subsisting recreational agreement;

e) a copy of the budget, if any, of the corporation;

f) a copy of the financial statement, if any, of the corporation.

g) a copy of the by-laws of the corporation;

h) a copy of any minutes of proceedings of a general meeting of the corporation or of the board.
B. **Bonding Requirements**

Many jurisdictions impose bonding requirements on the developer of a condominium project, whereby the developer is required to furnish a bond as a precondition for proceeding with his development. The purpose of the bond is basically to ensure that the project is completed as planned. Both the purchaser and the taxpayer will have an interest in proper completion. The purchaser needs assurance that he will get what he has bargained for, and the taxpayer's interest is in ensuring that he will not end up bearing the cost of any servicing the developer is obliged to provide to or on the site.

The requirements of the B.C. legislation are typical. Under s.91 of the B.C. Land Title Act a subdivision plan, including a condominium plan, cannot be deposited in the Land Title office until approved under the Municipal Act. This means the purchaser cannot take title until after approval. Section 729(9) of the Municipal Act says that where "works" are to be constructed at the expense of an owner of land, either the owner must have completed the work prior to approval being granted, or the owner will have to post a bond to cover the cost. If the works are not completed on time, the bond may be forfeited. Provided
the bond is adequate, then, it will protect government against the cost of servicing, and the purchaser should be able to expect that either the project is complete at the time of the conveyance or approval would not have been given, or there is security to ensure that it will be completed.

Under section 91(3)\textsuperscript{85} of the Nova Scotia Planning Act a subdivision bylaw may require a subdivider to install servicing or to enter into a bond to do so. Not only will the bond be assurance of completion of the servicing, but s.91(3)(d) says that the subdivision bylaw can require that the bond act as security for the maintenance of the installations for a period of one year from the date of installations. The strength of the B.C. Act is that it is the duty of the approving officer to make arrangements to ensure that the works are completed, while in Nova Scotia the subdivision "may" make such provision. The strength of the Nova Scotia legislation is that if a bond is required it can be retained to ensure that the servicing actually does work properly after having been given a chance to function.

In provinces which allow phased developments the need for bonding is more acute. In a phased development the developer intends to complete an initial phase or phases, financing construction of future phases from the
proceeds of sale of previously completed phases. When the project is completed, the owners of all phases will combine in one strata corporation. The hazard for the purchaser in an initial phase is that if future phases do not proceed according to plan, maintenance costs common facilities will have to be borne entirely by the purchasers in the initial phase rather than being shared with owners in future phases. There is also the danger that common facilities promised as part of future phases may never be built.

The B.C. Condominium Act makes provision for phased developments. Section 7786 requires a developer who intends to develop in phases to file a Form E describing his plans. Where major common facilities are to be constructed in other than the first phase the developer must satisfy the approving officer that the cost of such facilities has been provided for in the mortgage financing or he must post a bond. Where the developer decides not to proceed with future phases and he has constructed common facilities in an existing phase, s.7987 obliges the developer to contribute to the common expenses attributable to the common facilities in proportion to the unit entitlement of the strata lots of the phases not to be built. The strata corporation can apply to the court "for an order for the
posting of a bond, letter of credit or other security for the contribution by the owner developer of his share of the common expenses".

Saskatchewan is the only other province of Canada which provides for phased developments. Section 9(2) \text{88} of the Saskatchewan Condominium Property Act allows the developer to file a caveat against his condominium plan reserving the right to construct additional units as part of the condominium scheme. The developer then has two years within which to file a replacement plan reflecting the new units. Section 10 \text{89} requires a developer who files such a caveat to deliver a bond to judgement creditors, receivers or "such persons as may be deemed to be entitled thereto in respect of the condominium plan or replacement plan of the developer" if the developer has not filed his replacement plan within the required time or other events occur which would prevent completion.

In B.C. section 83 \text{90} of the Condominium Act the strata corporation or a strata owner may claim against the bond, and under s.85 \text{91} the security shall not be released until

85. (1) A bond irrevocable letter of credit or other security provided under sections 81 to 84 shall not be released unless

(a) the common facility is completed;
(b) a strata council is elected, the strata corporation and the ownership developer
have entered into an agreement for the completion of the common facilities and the strata corporation, by special resolution, releases the security;

(c) the court makes an order under section 79 (2) for the provision of the common facilities; or

(d) the court orders the release.

(2) Security provided under sections 81 to 84 shall be released on completion of the common facility for which it was provided, and, if the municipality or regional district, or strata corporation, refuses to release the security, the owner developer may apply to the court for an order that it be released.

In Saskatchewan the strata owner or strata corporation cannot make a claim directly against the bond. Section 10(3) describes the circumstances under which the bond will be forfeited at the instance of the Provincial Secretary.

(3) Every bond delivered under subsection (1) shall be forfeited upon the demand of the Provincial Secretary where:

(a) the replacement plan and architect's certificate mentioned in subsection (4) of section 9 are not registered within:
   (i) two years after the day on which the caveat is filed; or
   (ii) any period of extension allowed under subsection (6) of section 9;

(b) final judgement in respect of a claim arising out of a condominium plan or a replacement plan has been entered against the developer; or

(c) the developer commits an act of bankruptcy, whether or not proceedings have been taken under the Bankruptcy Act (Canada).

and s. 10(4) allows payment out of the money.

(4) The Lieutenant Governor in Council may by order direct that any moneys recovered under a forfeited bond be paid over.

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(a) to the local registrar of the Court of Queen's Bench in trust for such persons as may become judgement creditors of the developer in respect of a claim rising out of a condominium plan or a replacement plan;

(b) to any trustee, custodian, interim receiver, receiver or liquidator of the developer named in the bond; or

(c) to such persons as may be deemed to be entitled thereto in respect of the condominium plan or replacement plan of the developer;

in accordance with and upon any conditions set forth in the order.
C. Deposits

Registration and bonding requirements ensure that if the condominium development is not complete at the time the purchaser take title it will indeed be completed, or in the case of phased development, some appropriate financial arrangement will be made to compensate for non-completion. It is common, though, for a purchaser to view his unit while it is in the course of construction and before the plan, declaration or description has been registered. He may, at that point, enter into an agreement to buy the unit, completion to take place at a later date when title can be conveyed. He will likely be encouraged to post a substantial deposit. The danger from the purchaser's point of view is that the developer may never register or may become insolvent.

There is no question that a purchaser who paid part of all of the purchase price for property and finds that title cannot be conveyed to him has a purchaser's lien against the property should be vendor become bankrupt. The problem of the purchaser who has placed a deposit on a condominium which is never registered is that he will not be able to realize on a lien on the property which was to be the subject matter of the purchase because title to it may never be registered. In such a case, it was held by Hutcheon, J. in Lehmann v. B.R.M.
Enterprises Ltd. that the purchaser has a lien on the whole of the vendor's property of which the subject-matter of the sale formed a part. The problem would be relative priorities of the lien as compared to other secured interests registered previously.

This matter is addressed in s.50(4) of the B.C. Real Estate Act, which requires the developer entering into a contract to sell subdivided land comprising strata lots, the plan for which has not yet been deposited in the Land Title Office to hold any money received from the purchaser in trust until the plan has been deposited. The trust funds are subject to s.14, 15 and 16 of the Act which require that a separate record of trust funds be kept, that the funds be deposited at a financial institution, and that money only be paid out on specified events occurring. Because of the definition of "subdivided lands" in the Act, the trust requirement only applies to the transactions of a developer selling 5 or more strata lots. Under s.50(8) no one can sell subdivided land involving strata lots located outside the province unless the strata plan has been deposited in the appropriate public office.

Section 119 of the Alberta Condominium Property Act requires that the developer hold any money paid by a purchaser in trust until improvements which the developer is obligated to provide both to the
residential until and the common property are substantially completed and the developer provides a registerable title document. Upon delivery of title documents and substantial completion of the residential unit the developer is entitled to 50% of the purchaser's money, and upon substantial completion of all improvements to the common property the developer is entitled to payment of the balance with accrued interest.

Under s. 6397 of the Ontario Condominium Act all funds which the proposed declarant receives from a purchaser on account of the purchase of a condominium before registration of the declaration and description shall be held in trust in a financial institution. Unless the purchaser enters into occupation of the unit or the agreement of purchase and sale terminates entitling the purchaser to the return of the money, the proposed declarant is entitled to interest on the trust funds. If the purchaser enters into occupation before taking title, the proposed declarant must pay interest to him at a prescribed rate on account of the purchase price until title is transferred to him. The object of the later provision is presumably to encourage timely closing. Ontario cases show that attempts to circumvent the interest provision, for instance by paying interest in a form other than cash, will be viewed with disfavour.
The provision of the Prince Edward Island Condominium Act relating to pre-registration deposits is contained in s.3298 and is almost identical to s.53 of the Ontario Condominium Act. The other provinces have no provision respecting deposits.
D. Conclusions

There are obviously problems in a purchaser relying on the law of misrepresentation as a remedy for false advertising, and the Statutes in force which go give a purchaser some protection in the area of advertising either do not apply to real estate transactions or do not contain any private remedies. The rationale against extending the protection of trade practice legislation to real estate transactions is presumably that do to so would open the floodgates of litigation unduly, at least that claims under such legislation would be more frequent and much larger than at present. It would be hard to maintain the argument that the purchaser in the average real estate transaction is much more sophisticated than the purchaser in any other consumer transaction, or that the details of the real estate transaction are more accessible for inspection or verification. While it is true that claims would be larger, it is also true that the damage done by false advertising or other misrepresentations in the real estate field is greater, and hence the need for protection is greater.

The utility of compulsory disclosure provisions to a purchaser will usually increase the longer the purchaser has to digest the information he has received before irrevocably committing himself to purchase.
Under the B.C. prospectus or disclosure statement requirement the purchaser can receive the disclosure almost contemporaneously with executing an agreement to purchase, and will have no recourse if the information does not coincide with his previous understanding of the development unless there is a material false statement.

From the purchaser's point of view a "cooling-off" period similar to the one in the Ontario Act under which the purchaser has 10 days from delivery of the disclosure statement to rescind the agreement is more effective, and such a "cooling-off" period would not prejudice the developer unduly.

None of the provincial statutes clarify the position of a purchaser who completes the real estate purchase without receiving any disclosure statement. The Pennyfarthing and Benner cases both seem to support the view that the right of a purchaser to declare the agreement binding on him if he has not received the statutory disclosure ends when the agreement has been executed. In B.C. where the real estate purchase is of land outside the province and the purchaser has not received a prospectus, even after completion provided he remains the beneficial owner he has one year from the date the contract was entered into to rescind.

Persumably the reason for extending this protection only
where the purchaser is purchasing out-of-province land is that with an out-of-province purchase the purchaser is more likely to be hoodwinked, but for the purchaser who has been hoodwinked it would make little difference whether the land in respect of which he received no disclosure were in or out of the province. It could certainly be argued that it would not unduly prejudice the developer to legislate that where he has failed to furnish disclosure substantially as required, the purchaser has a certain length of time from entering into the contract to rescind whether or not the agreement has been executed, provided the purchaser remains beneficial owner and can return the property in substantially the same condition as when he purchased it. Opponents will argue that the rescission provisions are likely to be used as an "out" by purchasers who would not have relied on anything in the disclosure even if it were furnished, but simply seek exit from what has proved to be, in retrospect, a bad business deal. In order to make the legislation certain, however, it would probably be better to apply one rule to all and prefer the purchaser to the negligent developer, and allow the purchaser a reasonably short time period such as three months to rescind.

The content of the disclosure should be sufficient to answer or at least direct the purchaser's attention
to key questions that the average unsophisticated purchaser would not be expected to ask on his own. The key areas of disclosure are financial details and obligations such as budgets, operating expenses, and management contracts; groundrules such as bylaws; and construction details of units and common facilities and property. Financial disclosure under the B.C. Real Estate Act just requires "particulars of the estimated operating budget of the strata corporation and how the budget will be allocated among the individual strata lot owners", while the Ontario purchaser will receive an itemization, details of reserve funds and other financial information which would be useful to a purchaser and which a purchaser unfamiliar with condominium developments could not be expected to inquire about without prompting.

The B.C. purchaser will receive notice of any bylaws established by the developer which deviate from the pro forma bylaws in the Condominium Act, and these bylaws will have been subjected to scrutiny by the Superinendent before coming into effect. The purchaser cannot rely on these bylaws as being the ones which will pertain in the future, though, because they can be altered by special resolution of the strata corporation. There is an advantage in certainty from the purchaser's point of view in having a declaration establishing basic
rights which can only be altered with the unanimous approval of the owners. This will be considered more fully in Chapter III.

The B.C. purchaser, as part of the required disclosure, will not have construction plans, while in Alberta the developer must include under s.10, as part of the purchase agreement, drawings showing details of the development as it will exist "when the developer has fulfilled his obligations under the purchase agreement." In Ontario the drawings and verification that they represent the project as-built will be filed as part of the description. The purchaser certainly should have access to the drawings at some stage, preferably before he commits himself to purchase, as he would in Alberta. B.C. requires the developer to include in disclosure a description of any construction and equipment warranties which is not required in other provinces. While this is desirable from the purchaser's point of view, it might be more useful to also require the developer to disclose the lack of warranties if that is the case. On the other hand, it could be argued that if the purchaser is interested in plans and warranties he will think to ask for them himself.

One might suggest that provinces which have no disclosure requirement do not need one because the bulk of the information which is disclosed in other provinces
is available at the registry. The problem with this suggestion is that only the most sophisticated purchaser will visit the registry before committing himself to purchase. One might also suggest that the conveyancing lawyer should prompt the purchaser to ask for the information, but again, the visit to the conveyancing lawyer usually takes place after the purchaser has committed himself to the purchase.

B.C. is the only province which has a procedure for review, by government, of disclosure relating to purchase of a condominium within the province. The requirement has been relaxed, presumably because the view was that given the relevant facts the purchaser can protect himself without government supervision, and that an approval requirement causes unnecessary expense and delay to the developer. The Superintendent still must approve unit entitlement, the schedule of interests on destruction, and any bylaws which deviate from the proform ones in the Act. While it could certainly be argued that the requirement is a good one in the case of unit entitlement and schedule of interests on destruction which the unsophisticated purchaser would not readily understand, the purchaser is probably quite capable of understanding bylaws and does not need the Superintendent to vet them for him. As regards unit entitlement, it is submitted that many purchasers will
be ignorant as to its significance and that in the provinces \(^{101}\) in which there must be a clear statement as to the proportionate contribution of the owner towards maintenance the purchaser is less apt to be taken by surprise.

The B.C. purchaser can declare the contract of purchase not binding on him until the agreement has been executed, disclosure has not been provided, and can sue if there has been a material false statement in it. There is apparently no remedy if material details have been omitted but the agreement has been executed. Damages should be available to a purchaser who has been adversely affected by non-disclosure of a required material detail. Where there has been a material false statement, the B.C. Real Estate Act is unique in allowing the purchaser to bring an action against the directors of the developer.

Most of the provincial Statutes which require disclosure make it an offence not to disclose. Under the B.C. and Alberta legislation liability is imposed not only on the developer who fails to comply but also on the directors of the developer if the developer is a corporation. The penalty in Alberta \(^{102}\) is a fine of up to $2,000 for the developer, and up to $500 for a member of the board who is knowingly part of failure to comply. In B.C. the penalties are much more significant and
arguably more effective up to $10,000 for a corporation and up to $5,000 for an individual.

The information which a purchaser is entitled to request from the strata corporation under the legislation in effect in many provinces includes much more than just arrears in maintenance payments. Any arrears in maintenance payments of which the purchaser learned before completion can be adjusted for in the conveyance so that the purchaser will not be liable. Other information which the purchaser is entitled to request, such as s.36(1) (e)

"the amount, if any, by which the expenses of the strata corporation for the current fiscal year are expected to exceed the expenses budgeted for the fiscal year;

s.36(1) (f)
"the amount of the contingency reserve fund"

s.36(1) (g)
"that there are no amendments to the bylaws not filed in the land title office other than those certified."

is all important information. Under s.32(8) of the Ontario Act the information can be requested by a proposed purchaser, while in B.C. an owner, or purchaser or his authorized agent can request it. The information is only useful if it is provided to a purchaser before he has committed himself so it should be clear that the information is available to him before he has entered into an agreement. The unsophisticaed purchaser
probably cannot be expected to think to ask for the information himself, so it should probably be the duty of the vendor or his salesman to provide it.

Where the approving officer has the discretion over whether or not to require a bond and whether or not to release it, the B.C. legislation governing bonding is probably adequate. In some instances, however, the strata corporation has some discretion over when a bond should be posted or released. Under s.79(3) of the B.C. Condominium Act in the case of a phased development the strata corporation can apply to have a bond posted to cover the anticipated contribution of future phases towards common expenses where the developer decides not to proceed.

Under s.85(1) where security has been provided for completion of future phases the bond can be released if the strata council has been elected, the strata corporation and owner developer enter into an agreement for the completion of common facilities and the strata corporation, by special resolution, orders its release. The purchasers, present and prospective, are not very well protected by these sections because in the initial stages a special resolution of the strata corporation may in essence mean an affirmative vote by the developer who controls it. A vote of the strata corporation should not have control of it and perhaps this is an
area where the Superintendent should exercise some control.

The requirement in s.50(4) of the B.C. Real Estate Act relating to deposits paid by the purchaser before completion seems adequate, but there seems to be no reason that the requirement should not apply to condominium purchasers in general and not just situations where the developer is marketing 5 or more strata lots. There is no administrative cost involved as there would be with preparation of a prospectus, so extension of protection would not prejudice the developer unduly.
III INvolvement in the Strata Corporation

The ideal of the strata corporation is that there will be speedy and orderly transition from developer control of the condominium development at the time the documents forming it are deposited at the registry offices to harmonious and efficient purchaser self-government soon afterwards. The sooner the strata corporation can become a unit functioning independent of the developer the sooner the developer's work ends. The ideal is not always reality, however, especially when lots in the development are slow to sell. The developer may maintain a controlling position in the strata corporation for a considerable length of time and here the interests of the purchasers and the developer may diverge. The developer may seek to minimize expense to himself and maximize selling features, while the purchasers may take a longer range view of what expenses and decisions are necessary to enhance the quality of their living.
A. Formation of the Strata Corporation and Developer Handover

In all provinces the day-to-day decision-making involved in running the condominium development is performed by what is roughly analogous to the board of directors of a corporation elected by the owners. The terminology varies - in B.C. the "strata-corporation" elects a "strata council", in Ontario the corporation elects a "board". In all cases the owners meet annually or as often as the bylaws or declaration provide to approve financial statements and budgets and elect the board. It is relevant to know what mechanism triggers the first meeting of the strata corporation and how the handover of control from developer to purchasers is achieved.

In many provinces there is a set time period within which the first meeting of owners must be held. Ontario, Prince Edward Island and Saskatchewan have the shortest time periods - in Ontario and Prince Edward Island the corporation is required by statute to hold an annual meeting of owners not more than 3 months after the registration of declaration and description; in Saskatchewan the schedule A bylaws to the Condominium Property Act require a general meeting within 3 months of registration of the condominium plan. In British Columbia and Alberta it is the responsibility of the developer to convene the first meeting. Section 24 of the Alberta Condominium Property Act requires the developer to convene a meeting of the corporation within 90 days from the day that 50% of the residential units are
sold or 180 days from the date that the first residential unit is sold, whichever is sooner. Under s.123 of the B.C. Condominium Act the owner developer must call the first annual general meeting on the earlier of the date on which 60% of the strata lots have been conveyed, or 9 months after registration of the strata plan. In the other provinces although the owners are supposed to meet at least annually, there is no mechanism which triggers the first meeting.

The primary purpose of the first meeting of owners will be to elect a board and to consider budgets for the next year. If the developer retains substantial ownership, either because the units have been slow to sell or because he has deliberately retained units for investment purposes, he may be in a position to control or influence the composition of all or part of the board. In most provinces, should he retain an interest in units under a vendor's mortgage he will have the ability to vote in strata council elections. The dominance of the developer is recognized in the Ontario and Prince Edward Island Acts, which mandate a second meeting of owners to elect a new board when the declarant ceases to be the registered owner of a majority of the units.

In Ontario and Alberta there is a requirement that the developer hand over certain documents to the corporation. The purpose is so that the corporation will be fully informed on matters necessary to give them a sensible basis for decision-making. Ontario has the most extensive requirements. There the handover takes place at the
corporation meeting called when the developer ceases to have a majority interest in the development.

Section 26 of the Ontario Condominium Act requires the declarant to hand over the following information:

26. (3) At the meeting required under subsection (1), the declarant shall give to the board elected at that meeting,

(a) the seal of the corporation;
(b) the minute book for the corporation, containing the most current copies of the declaration, by-laws, rules and regulations any amendments thereto;
(c) copies of all agreements entered into by the corporation or the declarant or his representatives on behalf of the corporation, including the management contracts, deeds, leases, licences and those items set out in subsection 52(6);
(d) a record maintained under subsection 20(2);
(e) the existing warranties and guarantees for all the equipment, fixtures, and chattels included in the sale of either the units or common elements that are not protected by warranties and guarantees given directly to a unit purchaser;
(f) the as-built architectural, structural, engineering, mechanical, electrical and plumbing plans;
(g) the original specifications indicating thereon all material changes;
(h) the plans for underground site service, site grading, drainage and landscaping together with cable television drawings if available;
(i) such other available plans and information not mentioned in clause (f), (g), or (h) but relevant to future repair or maintenance of the property;
(j) an unaudited financial statement prepared as at a date not earlier than thirty days prior to the meeting;
(k) a table depicting the maintenance responsibilities and indicating whether the corporation or the unit owners are responsible;
(l) bills of sale or transfers for all items that are assets of the condominium corporation but not part of the real property;
(m) a list detailing current replacement costs and life expectancy under normal maintenance conditions of all major capital items in the property, including, where applicable, those items set out in subsection 36(1); and
(n) all financial records of the corporation and of the declarant relating to the operation of the corporation from the date of
registration of the declaration and the description.

4. The declarant shall give to the board within sixty days after the meeting required under subsection (1) an audited financial statement prepared as at the date of the meeting required under subsection (1).

The Alberta Condominium Property Act requires the developer to hand over certain documents, not later than 180 days from registration of the condominium plan. The requirements of s.37 are similar to those in effect in Ontario, although not nearly as much financial detail is required, and there is no audit requirement corresponding to s.26(4) of the Ontario Condominium Act.

37. (1) The owner of the land at the time a condominium plan is registered shall provide to the corporation without charge not later than 180 days from the day the condominium plan is registered the original or a copy of the following documents:

(a) all warranties and guarantees on the real and personal property of the corporation and the common property for which the corporation is responsible;

(b) the

(i) structural, electrical, mechanical and architectural working drawings and specifications, and
(ii) as built drawings, that exist for the common property for which the corporation is responsible;
(c) the plans that exist showing the location of underground utility services, sewer pipes and cable television lines located on the common property;
(d) all written agreements that the corporation is a party to;
(e) all certificates, approvals and permits issued by a local authority, the Government or an agent of the Government that relate to any property for which the corporation is responsible.

(2) A corporation may at any time before it receives a document under subsection (1) make a written request to the owner of the land referred to in subsection (1) for a copy of that document and that person shall, within 20 days of receiving that request, provide to the corporation without charge a copy of that document if the document is in the possession of that person.

The other provinces have no such provision requiring handover of documents.
B. Budgets and Protection from Expenses Incurred by the Developer

In B.C., Ontario, and P.E.I. not only must the developer give the purchaser a budget for the corporation for a certain period following registration of the plan or declaration, but in addition he must in essence guarantee that budget. Section 128(4) of the B.C. Condominium Act says that the owner-developer must provide to each purchaser an interim budget of common expenses for the first 9 month period following registration of the strata plan. The timing of the delivery of that budget is not clear. Under s.128(7) if actual expenses for the period exceed the estimated expenses, the developer must pay the excess. The purpose is to prevent the developer from deliberately or optimistically underestimating expenses in running the development thereby misleading purchasers.

Under s.52(6) of the Ontario Condominium Act the budget statement must relate to the one-year period following registration, must be delivered before purchase or a rescission period will apply, and will include more detailed information as to both revenues and expenses. According to s.52(8) and s.52(9) where actual expenses exceed budgetted expenses for the period the developer must cover the excess, although he is entitled to offset those expenses with any revenue which exceeds that which was anticipated. In Prince Edward Island the declarant must prepare a budget for the one-year period, but without the detail that Ontario requires. Section 31(4) of the Prince Edward Island Act
mirrors s.52(8) of the Ontario Act, requiring the declarant to cover excess expenses.
C. Developers' Contracts

A particular aspect of condominium development which can impede transition from developer control to efficient self-government and harmonious community is in the area of management contracts or lease of recreation facilities. It is not uncommon for the developer to operate a property management firm and engage that firm on behalf of the corporation to handle management duties. The problem in these contracts is that the corporation and developer will likely not be dealing at arm's length at the time the contract is entered into. The contract could be entered into before any units at all are sold or after sales have begun but while the developer is still a substantial owner and member of the strata corporation. This creates a clear conflict of interest - these "sweetheart" contracts may be in the best interests of the corporation and the developer's management company, but not infrequently they are primarily for the benefit of the latter.

The same problem can present itself in connection with leases of common facilities. The developer or a related company retains ownership of the common facilities and leases them to the strata corporation on a long-term basis. Jurisdictions which have a requirement that information be disclosed to a purchaser before purchase include these types of contracts as part of the information required to be disclosed. Disclosure in this instance has been found not to be sufficient protection for a purchaser, for B.C., Alberta,
Ontario and Prince Edward Island have specific protection for these condominium corporation contracts.

Section 17 of the B.C. Condominium Act allows the strata corporation to cancel any management contract on 3 months' notice after a special resolution of the corporation. So that the legislation is even-handed, s.17 allows the management company or manager to cancel a management contract on 3 months' notice. Under s.5 common areas related to the use of a strata lot must be included as part of the strata lot or part of the common property, so would not be the subject of a lease, but a lease relating to recreation facilities not part of the condominium property would not be covered by s.5. There is no provision under the B.C. Act for cancellation of a lease of recreation facilities.

Other provinces which have comparable protection are Ontario, Prince Edward Island and Alberta. None of the provinces has the blanket kind of cancellation provision which the B.C. strata corporation can exercise at any time. The Ontario Condominium Act distinguishes between a recreation or management contract entered into when the developer held a majority of the votes on the strata corporation, and a recreation or management contract entered into when the developer no longer has a majority. The assumption seems to be that once the developer ceases to have the majority of votes on the strata corporation he ceases to control it, so from the time the developer loses his majority the strata corporation is dealing independently and at arm's length from him.
Ontario directors are elected for a three-year term and elections may be staggered. In Ontario the corporation may terminate by bylaw any management agreement entered into when the majority of members of the board were elected when the declarant was registered owner of a majority of units.

The notice required for termination is 60 days, and the vote required to pass a bylaw is approval of the owners of at least 51% of the units. Section 19 of the P.E.I. Condominium Act is very similar, but a vote of members who own 66 2/3% of the common elements is necessary for termination.

Section 39(2) of the Ontario Condominium Act applies to "every agreement for the provision of services on a continuing basis, every lease of the common elements or part thereof for business purposes and every agreement for the provision of recreation facilities to the corporation on other than a non-profit basis." Such contracts entered into when the majority of the board was elected when the declarant was the registered owner of a majority of the units are subject to expiry. Unless they expire within 12 months after their "effective date" they are deemed to expire within 12 months unless within that twelve month period the agreements are ratified by the board at a time when the majority of board members are elected when the declarant ceases to be majority owner. P.E.I. has no comparable section.

As is the case in Ontario, an Alberta condominium corporation can cancel a management contract entered into
when the corporation was presumed not be to dealing at arm's length with the developer. Section 1(1)(k) of the Alberta Condominium Property Act defined a management agreement as follows:

(k) "management agreement" means an agreement entered into by a corporation governing the general control, management and administration of

(i) the real and personal property of the corporation associated with the residential units, and

(ii) the common property associated with the residential units;

Where the management agreement was entered into by a board elected at a time when the developer had a majority vote, the management agreement may be terminated with 60 days notice from the corporation at any time after 2 years from the date the agreement was entered into. Presumably what is necessary is a majority of votes cast at a meeting of a corporation. There is no provision for cancellation of recreation agreements.

The other provinces have no provisions which relate to cancellation of management or recreation contracts, but does that mean that where the developer can control board corporation decisions that he has full licence, on behalf of the corporation, to enter into contracts of these kinds whether or not a conflict of interest exists and whether or not the contracts are in the best interests of the corporation? In provinces which do have cancellation provisions are those provisions the only protection the corporation has in the face of an improvident contract, or is
there some general duty on the developer's part of self-interest is involved?

The developer will have entered into the management contract recreational lease as either "promoter" of the condominium corporation or influential member of its board. Courts seem increasingly to be recognizing that a member of the board of a condominium corporation owes a fiduciary duty, analogous to the duty owed by a director to an incorporated company, or an agent to his principal, or a trustee to the beneficiary of the trust. According to L.C.B. Gower:

"The general principle upon which these duties are based is clear and simple. Directors, once their appointments take effect are fiduciaries and must therefore display the utmost good faith towards the company in their dealings with it or in its behalf."21

"... the fact that directors are fiduciaries imposes on them 1) subjective duties of honesty and good faith, and 2) objective duties not to place themselves in a position where their duties might conflict with their private interest."22

First, then . . .

"... directors are required to act "bona fide in what they consider not what a court may consider - is in the interests of the company and not for any collateral purpose." Hence there may be a breach of duty, notwithstanding that it is not shown that they have acted with any conscious dishonesty, if they have acted as they did because it was in their own interests or that or some third party, without considering whether it was also in the interests of the company."23

They should not, therefore, enter into any contract which will bind the company when the motivation is benefit for themselves and not for the company. Even where there is benefit to the company, a director should not put himself
in a position where his own interests conflict with those of the company. Where there is self-dealing:

"By the middle of the last century it had been clearly established that the trustee-like position of directors vitiated any contract which the board entered into on behalf of the company with one of their number . . . in general the contract will be voidable at the instance of the company, and any profits made by the directors personally will be recoverable by the company."\(^{24}\)

Because liability for the self-dealing itself can be avoided by disclosure, does it therefore follow that a promoter can avoid liability for contracts he enters into on behalf of a company by disclosing to the company, at the time that he is the sole or controlling member, his interest in the contracts? The answers seems to be that disclosure must go further than that. L.C.B. Gower gives the following answer:

". . . the promoter cannot escape liability by disclosing to a few cronies, who constitute the initial members, when it is the intention to float off the company to the public or to induce some other dupes to purchase the shares . . . the position therefore seems to be that disclosure must be made to the company either by making it to an entirely independent board or to the existing and potential members as a whole. If the first method is employed the promoter will be under no further liability to the company, although the directors will be liable to the subscribers if the information has not been passed on in the information to subscribe; indeed, if the promoter is a party to this invitation, he too will be liable to the subscribers. If the second method is adopted the veil of incorporation is in effect ignored and disclosure must be made in the prospectus, articles or otherwise, so that those who are or become members, as a result of the transaction in which the promoter was acting as such, have full information regarding it. A partial or incomplete disclosure will not do; the disclosure must be explicit."\(^{25}\)
Gower cites as authority Gluckstein v. Barnes, in which a group of businessmen bought property as a syndicate and resold it to a company of which they were directors. The prospectus for the company disclosed a profit to the directors of an amount subsequently less than was realized. Lord Halsbury L.C. was scathing in his indictment of the directors' conduct and said, at p. 255,

"My lords, I decline to discuss the question of disclosure to the company. It is too absurd to suggest that a disclosure to the parties to this transaction is a disclosure to the company of which these directors were the proper guardians and trustees. They were by the terms of the agreement to do the work of the syndicate, that is to say, to cheat the shareholders; and this, forsooth, is to be treated as a disclosure to the company, when they were really there to hoodwink the shareholders, and so far from protecting them, were to obtain from them the money, the produce of their nefarious plans."

In his judgement in the same case Lord Robertson said, at p. 258:

"In the normal case, where the directors are truly and not merely in name the executive of the company, it may be assumed that they will be vigilant and critical of the particulars of a bargain of such paramount importance as the purchase of the property to be traded with, and that, dealing at arm's length, they will examine into anything bearing on that matter does not tell its own story in its face. But, in the present case, the company was paralyzed so far as vigilance and criticism were concerned; for the board-room was occupied by the enemy.

Now, the question whether adequate disclosure has been made to a company by a vendor bound to do so must necessarily depend upon the intelligence brought to bear on the information. And if, by his own act, the promoter has weakened, or, as here, has annulled the directorate, his case on disclosure becomes extremely arduous - for he has to make out such disclosure to shareholders as makes directors unnecessary."
Where there has been a breach of the promoter's duty to disclose, the primary remedy is for the company to bring proceedings for rescission of the contract and recovery of any secret profits the promoter has made, as would be the case normally in the event of breach of fiduciary duty by a director.

It appears then, in the context of company law, that a director owes his company a duty to act in good faith with a view to the best interests of the company. The liability for self-dealing per se can be avoided by proper disclosure. Can the fiduciary duty be applied to the developer of a condominium project? In Owners: Condominium Plan Number 753-1207 v. Terrace Corporation (Construction) Ltd.: Zeiter et al., the developer was Terrace Corporation (Construction) Ltd. of which Erwin and Willi Zeiter were the principals. While they were the original and only members of the board of managers of Condominium Plan Number 753-1207, the Zeiters, on behalf of the condominium corporation, executed a lease of the parkade, which had been designated common property, to Terrace Corporation (Construction) Ltd. For a period of 99 years the parkade was then leased back to the condominium corporation under a sub-lease executed by the Zeiters on behalf of the condominium corporation, under which the subtenant strata corporation paid a substantially larger rent than it was receiving from the developer.

In the Alberta Queen's Bench action, the strata corporation questioned the propriety of the lease arrangements. According to what was then s.25 of the Alberta
Condominium Property Act, a lease of common property had to be approved by unanimous resolution of the corporation, and all those having interests must have approved the lease in writing. In this case the lease had been executed after a number of purchasers had signed interim agreements to purchase the units. The Zeiters had knowledge of these interim agreements and the purchasers should have approved the leases in writing as required by the Statute. The condominium corporation therefore had no power to grant the lease, and so it was set aside.

MacLean, J. went on to say that apart from any duty imposed by s.25 of the Alberta Condominium Property Act the developers occupied a position of trust.

"The existence of these interim agreements covering the sale of the units to the knowledge of the individual defendants in their capacity as members of the board of managers places them in a position where they are in very serious conflict of interest. To the extent that they are members of the plaintiff corporation's board of managers they represent on that board all of the owners of the units and in that regard are trustees. As trustees they are bound to carry out the management of the corporation in the best interests of the purchasers who from the point of view of equity are the equitable owners of the unit. The conflict with their interest as officers of the tenant corporation is obvious, and the proof of the reasons of the conflict of interest rules lies in the evidence that the tenant promptly sublet the demised premises at a substantial profit. Being trustees for the equitable owners, they were in conflict of interest when they literally purported to deal with themselves and are in a breach of trust, having demonstrably failed to act in the best interest of the plaintiff corporation, for this reason the lease must be set aside.

All of this was done with the knowledge and complicity of the defendant corporation, and they are a party to the breach of trust and are tainted with it. The plaintiff corporation will be
entitled to an order setting aside the lease and requiring the defendant corporation to account for the rents and profits thereof and pay the same to the plaintiff corporation."28

Did the court reach the result it did because there were purchasers who had entered into interim agreements at the date the lease was entered into, or would the result have been the same even had there been no interim agreements? When MacLean, J. refers to "the best interests of the purchasers, who from the point of view of equity are the equitable owners of the unit" is he referring to all potential purchasers, and therefore placing the developer in a position of trust to all of them? It could certainly be argued that that is what he means when one considers the result - MacLean, J. ordered that the lease be set aside and that there be an accounting to the strata corporation, and not just that damages be paid to those purchasers who had entered into interim agreements prior to the lease. On the other hand, maybe the duty is owed to the strata corporation, or is the strata corporation involved merely as an agglomeration of the interests of potential purchasers? If the latter is the case, then one would assume that the court would have reached a different conclusion if a few of the purchasers who had entered into interim agreements before the lease was signed had approved it in writing, or certainly if all such purchasers had approved the lease in writing. If the existence of the lease was disclosed to some purchasers and not to others would the strata corporation had a remedy? Or is disclosure or non-disclosure really the issue?
In York Condominium Corp. No. 167 et al v. Newry Holdings Ltd. et al

parking spaces additional to those designated for use by each individual owner formed part of the common elements designated in the description. Before the declaration and description were registered, the developer sold a number of the parking spaces and retained the proceeds. The condominium corporation asked for an accounting of the proceeds of sale. The claim was dismissed at trial because, according to Galligan, J., until the declaration was registered the purchasers of the units had no interest in the additional parking spaces, that those remained in the ownership of the developer who was free to deal with them as he saw fit.

The Ontario Court of Appeal pointed out that at the time the developer disposed of the parking spaces there were a number of agreements of purchase and sale in existence, under which each unit purchaser acquired in equity an interest in the common elements. Wilson, J.A. held that where units in a condominium project are sold before registration, since the condominium is substantially the creature of statute, the parties must be taken to have contracted with reference to the Act and declaration. Once the developer has started to sell units he had committed the project to that of a condominium under the Act and declaration. She continues:

"I think he has also placed himself in a fiduciary relationship to the unit purchasers not only with respect to their units but also with respect to the interests appurtenant thereto. He therefore holds the property in trust for the unit purchasers, present and prospective, and for the condominium corporation which will come into being upon
registration of the declaration. I believe he is under a duty to protect the interests of all unit owners, present and prospective, and cannot put his own interests in conflict with theirs even although he himself continues to be an owner as long as any units remain unsold."32

The Court ordered that the proceeds of sale of the units could not be retained by the developer but had to be returned to the strata corporation. Again, while the trust is stated to be for the unit purchasers, present and prospective, the proceeds of sale of the additional spaces was to be paid to the strata corporation, and the Court refused to allow the developer to reduce the award in proportion to the developer's ownership of units at the time the spaces were sold. In this case presumably the developer could have accomplished his purpose by altering the declaration with the consent of all those with an interest in the property including those who had entered into agreements of purchase and sale.

It does seem clear that the Courts are recognizing that developers of condominium projects are fiduciaries, and in describing their duties are using language very similar to that used to describe the duties of a director or promoter to his company. A director or promoter is a fiduciary in relation to his company, as distinct from its shareholders, although in considering the interests of the company the interests of many parties may have to be considered. While the company has a separate legal existence, though, the condominium corporation does not, so can it be said that the developer owes a fiduciary duty to the condominium
corporation? The lack of separate legal identity does not prevent the condominium statutes from imposing duties and powers on the condominium corporation, nor does it prevent the condominium corporation from suing or being sued, so why should the fiduciary duty that the Courts are importing from corporate relationships at common law not be extended to directors and developers of a condominium corporation? The cases do seem to support this extension, at least as it applied to developers.

Can the responsibility for self-dealing be avoided by disclosure? The result in the Zeiter case and the dicta of the Newry case could be interpreted to mean that disclosure may protect a condominium developer or promoter from liability for self-dealing alone, but disclosure would not protect him if he did not have the best interests of the condominium corporation in mind in making commitments.

Relating to condominium corporation affairs. Ontario is the only province which incorporates into condominium legislation disclosure declarations analagous to those of a director who has a personal interest in dealings with his corporation. Under s.17 of the Condominium Act a director who has an interest in a contract to which the corporation is to be party must declare his interest at a meeting of the directors of the corporation and cannot vote on the matter. If the directors approve the contract the director will not be accountable "to the corporation or to its owners for any profit or gain realized from the contract or transaction, and

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the contract or transaction is not voidable by reason only of
the director's interest therein."

If the director has not disclosed or he cannot get the
approval of the board he can fall back on 17(5):

(5) Notwithstanding anything in this section, a
director, if he was acting honestly and in good
faith, is not accountable to the corporation or to
the owners for any profit or gain realized from any
such contract or transaction by reason only of his
holding the office or director, and the contract or
transaction is not by reason only of the director's
interest therein voidable,

(a) if the contract or transaction is
confirmed or approved by at least two-
thirds of the votes cast at a meeting of
the owners duly called for that purpose;
and

(b) if the nature and extent of the
director's interest in the contract or
transaction are declared and disclosed in
reasonable detail in the notice calling
the meeting.

Of interest is the fact that if a director does disclose
he will not be accountable to the corporation, suggesting
that if he does not disclose he will be accountable, which
seems to fall back on the common law fiduciary duty or a
director towards his incorporated company. According to the
wording of s.17(5) disclosure does not exonerate the director
from all potential liability which leaves open the
possibility of a remedy were the contract itself an
improvident once entered into at the instance of a director
who did not have the best interests of the condominium
corporation in mind.
D. Voting

Allocation of voting rights is generally according to their unit ownership or proportionate ownership or proportionate ownership of the common elements. In Ontario voting by owners is on the basis of one vote per unit. That is the scheme in British Columbia with respect to a strata plan which is exclusively residential; but where the strata plan is not residential votes are determined according to a schedule filed with the strata plan in the Land Title Office. (The schedule must be acceptable to the Superintendent of Insurance according to s.4(h) of the B.C. Condominium Act.)

In Saskatchewan and Alberta the voting rights of each owner are determined by his "unit factor", set out on a schedule filed with the plan. Allocation of voting rights on the basis of proportionate entitlement in the common property must be inferred from the New Brunswick and Prince Edward Island Acts, which describe the requisite percentages for passing bylaws and additions to the common property in terms of ownership in the common elements. In contrast, voting rights in Nova Scotia and Manitoba are determined by the declaration; in Newfoundland by the bylaws.

All provinces but Quebec and Newfoundland allow mortgagees to vote in the place of the owner. Most provinces which give the mortgagee a right to vote require the mortgagee to give notice of its intention to exercise the right; and in B.C., Nova Scotia, New Brunswick and Manitoba the mortgagee must found its right to vote on a provision in its mortgage. It is explicit in some legislation
that as amongst competing mortgages it is the mortgagee with priority which has the vote. In Alberta and Saskatchewan unanimous resolutions are necessary to grant restrictive convenants or easements, terminate condominium status or sell property, and where a unanimous resolution is required, it is only the mortgagee and not the owner who can exercise the right to vote. Only British Columbia limits the circumstances in which a mortgagee may exercise the power - s.18(1) of the Condominium Act says that the power of the mortgagee to vote is "only in respect of any matter relating to insurance, maintenance, finance or other matters affecting the security for the mortgagee."

Where the condominium corporation is to make certain important decisions about its future most provinces require more than a simple majority decision. In Prince Edward Island, Manitoba, Nova Scotia and New Brunswick a decision to pass a bylaw requires 66-2/3% approval of owners; a decision to make any substantial addition, alteration or improvement to the common elements requires 80% approval. In Newfoundland 2/3 can change bylaws, and 80% can change the declaration. An ordinary bylaw in Ontario is first passed by the board then confirmed by a vote of those who own not less than 51% of the units; while some decisions require a "special bylaw" which is first passed by the board then confirmed by those who own not less than 2/3 of the units. In British Columbia and Alberta certain major steps such as alteration of bylaws require a "special resolution" -
in B.C. a 75% vote of those owners present at a meeting -
in Alberta 75% of those owners entitled to vote.
(According to s.26(4) of the B.C. Condominium Act where the
condominium development is not exclusively residential but
contains more than one residential lot, bylaws can be amended
by special resolution or by an alternative formula specified
in the bylaws.)

It should be evident that regardless of the manner in
which votes are allocated, where the developer experiences
slow sales or deliberately retains units for investment, he
may exercise considerable voting in the strata corporation.
In addition, he may have the right to vote as mortgagee in
respect of purchases he has financed. While he may not have
the ability to dictate the affairs of the strata
corporation, where a decision requires more than a simple
majority the developer's voting strength may, in effect, give
him a veto. As an example, a special resolution is required
under s.17 of the B.C. Condominium Act to enable the strata
corporation to cancel a management contract. This provision
would give the purchasers in the strata corporation
protection against a developer who has entered into a
"sweetheart" contract with himself or an affiliate. The
problem is, of course, that where the developer controls a
bloc of votes the special resolution may not be obtainable.

Elections to the board of directors are usually
determined as one would expect - whoever receives the most
votes wins, although the provincial condominium statutes
usually leave election procedures to the bylaws or
declaration of the individual corporation. A developer with a substantial number of votes will have a great deal of influence on who is elected to the board. With majority voting power the developer could certainly control all positions on the strata council and even with a smaller proportion of votes, unless the other owners were cohesive enough to combine to elect their choices he could control composition.

One would think that if there were seven positions on the board if the developer occupied one position purchasers would occupy the other six, but that is not necessarily the case. In most provinces there is no ownership qualification for the board. In Nova Scotia, Prince Edward Island and New Brunswick the directors will be "persons" and any qualifications "may" be set out in the declaration. In Alberta, Saskatchewan and Newfoundland any qualifications will be set out in the bylaws - in Manitoba by bylaw or declaration. The Ontario director must be a "person" who consents to his election. Only British Columbia has a requirement that a strata council member must be an "owner."

In all provinces other than B.C., then, it appears that a developer could use his voting strength to elect whomever he wants to the board; so a developer could vote a number of shareholders, officers, directors or friends onto the board. The B.C. Condominium Act defines "owner" as the person registered in the register of the land title office as owner in fee simple of a strata lot. The B.C. Interpretation Act a "person" includes a "corporation, partnership or
party, and the personal or other legal representatives of a person to whom the context can apply according to law." It would appear that in B.C. a corporation owning a strata lot could occupy a position on the strata council. Where, however, the corporation owned a number of strata lots the corporation could occupy only one position on the strata council, so the corporation could not elect a different representative to occupy a set on the strata council in respect of each lot owned.

Concern about the voting power of the developer is recognized in the Ontario, Prince Edward Island and Alberta condominium statutes. As pointed out previously in Ontario and Prince Edward Island the existing board is dissolved and a new board elected when the developer ceases to have majority ownership; in Alberta, the condominium corporation can cancel a management agreement entered into when the developer had a majority vote. What is not addressed in these provisions is that the developer can in effect control the outcome of decisions and elections with considerably less than majority ownership.

As was discussed earlier, Courts seem to be willing to recognize a fiduciary duty on the developer's part, putting him in a trust relationship with the strata corporation. The existence of the duty means that a developer should realize that the interests of the strata corporation are not necessarily identical to his own. There would seem to be no reason why the duty would not apply to all directors,
developer or not. This is reflected in s.24(1) of the Ontario Condominium Act which says:

"s.24(1) Every director and officer of a corporation shall exercise the powers and discharge the duties of his office honestly and in good faith."

Other provincial condominium statutes use language similar to that of company legislation when they say that directors will not be personally liable for acts done in good faith, which certainly seems to imply the existence of a duty to act in good faith.

While the developer-director and developer-promoter owe a fiduciary duty to the strata corporation, does the developer owe a fiduciary duty when casting his vote as a member of the strata corporation? If he can cast his vote as a member of the strata corporation without taking the interests of the strata corporation into account, he could probably approve any step no matter how great the conflict of interest involved. Ontario is the only province which has specific conflict of interests provisions. Section 17(5) referred to above of the Ontario Condominium Act says that as long as the conflict of interest is disclosed and approved by 2/3 of the votes cast at a meeting of the strata corporation the director "if he was acting honestly and in good faith, is not accountable to the corporation or to the owners for any profit or gain realized from any such contract or transaction by reason only of his holding the office of director." This section seems to suggest that the director would have a duty to act honestly and in good faith which transcends any vote of the strata corporation.
The fiduciary duty in the context of company law, says L.C.B. Gower, exists regardless of an exonerating vote. He states:

"As indicated above, the general meeting can to some extent release the directors from their duties either prospectively or retrospectively. It can permit them to enter into contracts with the company, to profit from their offices and otherwise to place themselves in a position where their interests may conflict with their duty. Similarly it can ratify an act by the directors in excess of the powers conferred on them, or resolve not to sue in respect of a breach of their duties of care and skill.

But a resolution of a general meeting cannot, either prospectively or retrospectively, authorize the directors to act in fraud of the company. And, here again, "fraud" is used in a wider sense than deceit or dishonesty. If the directors have acted in their own interests or those of a third party, or have not directed their minds to the question whether what they are doing is in the best interests of the company, a resolutions of the general meeting will not protect them."

Gower cites as authority, inter alia, Atwool v. Merryweather, in which individuals formed a company for the purpose of purchasing worthless mining properties from them at a substantial price. A shareholders' resolution had sanctioned the transaction, but members seeking to set aside the agreement alleged that the votes held by the defendants made it impossible to obtain a fair decision at a general meeting. Sir W. Page Wood, V.C., stated at p. 468:

"It appears to me that it would not be competent for a majority of the shareholders against a minority to say that they insist upon a matter of that kind where the whole inception of the company is simply a motion by a fraudulent agent, qua director, to confirm a purchase as made, for L 7,000, which was made for L 4,000. The whole thing was obtained by fraud, and the persons who may possibly form a majority of the shareholders, could
not in any way sanction a transaction of that kind."

Where the motivation of a director has not been the best interests of the company, the director will not be able to exercise his vote to get the shareholders' resolution he needs to relieve himself from liability.

The voting rights of the shareholder, however, have been considered a proprietary right which the holder can exercise in his own selfish interests. That statement is too simple, for there are some constraints, though the constraints on the way a shareholder can vote fall short of a fiduciary duty. According to L.C.B. Gower:

"... although members, unlike directors, are not required to act bona fide in the interests of others, they, like directors, must exercise their powers for a proper corporate purpose. The purpose is proper if it is to benefit the company or the generality of the members or class concerned. It is improper if it is primarily to injure other members, or perhaps, to benefit extraneous interests whether of the persons voting for the resolution or of third parties. Where the effect of resolution is to deprive the company of its property, or to enable the shares of a minority to be expropriated or to release the directors from their duties of good faith, the resolution will be ineffective unless it is shown positively that the purpose was proper. In other cases the resolution will be upheld unless it is shown that the purpose of those voting for it was improper or that reasonable men could not have regarded it as calculated to fulfill a proper purpose."79

Gower cites as authority, inter alia, Clemens v. Clemens 80 Bros. Ltd. and another. That case involved a company in which the aunt held 55% of the issued shares and the niece 45%. The aunt was a director but the niece was not. The directors proposed to increase the company's share capital by
issuing ordinary shares with voting rights and allotting them to the company's directors and employees. An ordinary resolution of shareholders was required which was obtained with the votes of the aunt. The niece opposed because the allotment would reduce her shareholding to less than 25% of the voting share and brought this action to set aside the resolutions.

Foster J. described the problem thus:

"For the plaintiff it was submitted that the proposed resolutions were oppressive, since they resulted in her losing her right to veto a special or extraordinary resolution and greatly watered down her existing right to purchase Miss Clemens's shares under art 6. For the defendants it was submitted that if two shareholders both honestly hold differing opinions, the view of the majority must prevail that shareholders in general meeting are entitled to consider their own interests and vote in any way they honestly believe proper in the interests of the company.

There are many cases which have discussed a director's position. A director must not only act within his powers but must also exercise them bona fide in what he believes to be the interests of the company. The directors have a fiduciary duty, but is there any, or any similar, restraint on shareholders exercising their powers as members at general meetings?"

He then proceeded to quote excerpts from the judgements in North-West Transporation Co. Ltd. v. Beatty, Allan v. Gold Reefs of West Africa Ltd., Greenhalgh v. Arderne, Cinemas Ltd., Meyer v. Scottish Textile and Manufacturing Co. Ltd., Scottish Co-operative Wholesale Society Ltd., and Ebrahimir v. Westbourne Galleries Ltd. all dealing with shareholders' rights and concluded at p. 282:

"I think that one thing emerges from the cases to which I have referred is that in such a case as the present Miss Clemens is not entitled to exercise
her majority vote in whatever way she pleases. The difficulty is in finding a principle, and obviously expressions such as 'bona fide for the benefit of the company as a whole', 'fraud on a minority' and 'oppressive' do not assist in formulating a principle.

I have come to the conclusion that it would be unwise to try to produce a principle, since the circumstances of each case are infinitely varied. It would not, I think, assist to say more than that in my judgment Miss Clemens is not entitled as of right to exercise her votes as an ordinary shareholder in any way she pleases. To use the phrase of Lord Wilberforce, that right is 'subject...to equitable considerations...which may make it unjust...to exercise [it] in a particular way'. Are there then any such considerations in this case?

I do not doubt that Miss Clemens is in favour of the resolutions and knows and understands their purport and effect; nor do I doubt that she genuinely would like to see the other directors have shares in the company and to see a trust set up for a long service employees. But I cannot escape the conclusion that the resolutions have been framed so as to put into the hands of Miss Clemens and her fellow directors complete control of the company and to deprive the plaintiff of her existing rights as a shareholder with more than 25 per cent of the votes and greatly reduce her rights under art 6. They are specifically and carefully designed to ensure not only that the plaintiff can never get control of the company but to deprive her of what has been called her negative control. Whether I say that these proposals are oppressive to the plaintiff or that no one could honestly believe they are for her benefit matters not. A court of equity will in my judgment regard these considerations as sufficient to prevent the consequences arising from Miss Clemens using her legal right to vote in the way that she has and it would be right for a court of equity to prevent such consequences taking effect.

The remedies for breach of a member's duty are much more restricted than those which apply to breach of fiduciary duty. According to Gower:
"There is no duty in the sense of an obligation giving rise to damages or compensation in the event of breach; the duties can be enforced only by injunction, declaration, winding-up or a regulatory order."87

The right of action which Gower discusses seems close to the "oppression" remedy which appears in modern company legislation.

A remedy for oppression is found in the B.C. Condominium Act s.72(6) and s.42. Section 72(6) says that:

(6) Where, under section 18, a mortgagee has acquired the voting rights of 51% or more of the owners, or one person owns 51% or more of the strata lots and their voting rights, the exercise of those voting rights in an oppressive or unconscionable manner may be enjoined by the court on an application of a majority of the owners affected.

The section applies then:

(1) Where a person owns at least 51% of the strata lots, or

(2) Where a mortgagee has acquired at least 51% of the voting rights.

Of course the party most likely to own at least 51% of the strata lots is the developer. The application must involve a "majority of owners affected". Presumably the "majority of owners affected" would exclude the developer otherwise this part of the section would not make sense - the developer with at least 51% of the strata lots would block the application.

On the other hand, a non-owning mortgagee could feasibly acquire at least 51% of the owners' votes on a particular issue, and an applications to prevent oppression could feasibly be brought with the concurrence of 51% of the owners.
in total. Both interpretations of who should be included in the majority of owners can co-exist without inconsistency, because when s.72(6) refers to exercise of voting power by an owner it is the other owners who are affected, whereas when the vote is being exercised by the mortagee it is all the owners who are affected.

The reality is, though, that substantially less than 51% voting power may be sufficient to create an oppressive situation. If company law rights and duties can be transposed to the condominium context, an action on the grounds of oppression would be available to an owner in a condominium corporation whether or not there was specific provision for it in the relevant legislation. The common law oppression remedy and the codification of that remedy in s.42 of the B.C. Condominium Act will be discussed further in Chapter IV.
E. Conclusions

To facilitate orderly transition from developer to strata corporation it is a good idea to legislate a time limit on the holding of the first condominium corporation meeting, and to place the onus on the developer to convene it, for to rely on a group of unrelated purchasers to organize themselves is probably unrealistic. As a primary purpose of the first meeting will be to elect a board, it makes sense to have the election at a time when purchasers may, depending on how sales have progressed, have an influence over who is elected. Section 123 of the B.C. Condominium Act which requires the owner developer to call the first annual general meeting on the earlier of the date on which 60% of the strata lots have been conveyed, or 9 months after registration of the strata plan, seems to make more sense than provisions in some other provinces requiring the meeting to be held not more than 3 months after the registration of declaration and description.

The Ontario Condominium Act requires the developer, at the first meeting of the corporation, to hand over the documents relating to the project including detailed financial records and as-built drawings of buildings and services. This provision is a great advantage to the condominium corporation because, in requiring that the information be provided in "package" form, it prevents the situation arising in which by the time the strata corporation is independent and informed enough to ask for the information, the information or the developer is no longer
available. One could argue that in some provinces the "as-built" drawings will be on file at the registry office as part of the description but these requirements, where they exist, generally relate to buildings only and not to services.

Ontario is the only province which requires the handover of the detailed financial information set out in s.26, and, as well, is the only province to require that the finances of the strata corporation be audited before handover. In forcing the developer to hand over all financial records from the date of registration of the declaration and description the provision ensures that the strata corporation has a proper and accurate basis for financial planning and prevents the situation where the developer simply covers expenses from the time of registration out of his own pocket and fails to keep adequate records. While the requirement of an audit may seem onerous in a small condominium corporation, there could be a provision for waiver where the corporation is under a certain size and all owners agree. In larger corporations, or where the owners will not agree to waive it the audit is probably well worth the expense.

Ontario, Prince Edward Island and B.C. require that the developer give the purchaser a budget. This type of provision is curiously lacking in legislation such as in Alberta where the Condominium Property Act has detailed disclosure provisions, but where disclosure of monthly maintenance contributions seems to be deemed adequate
financial disclosure. The detail prescribed in the Ontario Act is an advantage to the purchaser because it will trigger his mind to such important matters as the existence or absence of a reserve fund, and, of course, the disclosure is only useful to a purchaser if it is provided before the purchaser has irrevocably committed himself to purchase. The requirement that the developer cover cost overruns is a good one because it assures the purchaser that he can rely on the accuracy of the information, at least for that initial period.

The condominium statutes of British Columbia, Ontario, Prince Edward Island and Alberta give specific protection for management contracts entered into by the strata corporation. The protection is presumably directed primarily at contracts which are not at arm's length with the developer. In British Columbia the right of the strata corporation appears very broad as it is directed at all management contracts and not just those over which the developer has had influence, allowing the strata corporation to cancel on 3 months' notice. The vote required to do so, however, is a special resolution and it may be difficult to gather the degree of consensus necessary to exercise the right, especially if the developer has some voting strength himself. The comparable sections of the Ontario, Prince Edward Island and Alberta Acts are directed only at contracts entered into when the agreement was entered into by a board elected at a time when the developer had a majority vote, but the vote required to cancel the contract is not as overwhelming as it would be in
B.C. which requires a special resolution. The problem with the Ontario, Prince Edward Island and Alberta provisions, though, is that the developer may be able to in effect dictate the management contract where he has surrendered majority vote, and those contracts made at that stage would appear to be unassailable.

It is obviously extremely difficult to draft the perfect cancellation provision. The answer as to how the law should deal with these problems may be found in the area of fiduciary duty. The Courts of Alberta and Ontario in the cases of Owners: Condominium Plan Number 758-1207 v. Terrace Corporation (Construction) Ltd. : Zeiter et al and York Condominium Corp. No. 167 v. Newry Holdings Ltd. et al respectively have been willing to recognize that the developer owes a fiduciary duty. At common law the duty involves disclosing any conflict of interest but even if the conflict is disclosed and approved the duty is not necessarily discharged. Dicta in the York Condominium Corp. No. 167 et al v. Newry Holdings Ltd. et al supports the proposition that the developer, as fiduciary, has an overriding duty to protect the interests of all unit owners, "present and prospective" which disclosure will not necessarily discharge. The common law remedy for breach of fiduciary duty would be rescission of the contract and an accounting for the profits. Instead of incorporating specific cancellation provisions for "sweetheart" contracts the better approach might be to codify the fiduciary duty of the developer and other directors towards the strata.
corporation, in the same way that modern companies legislation has done.

The developer's voting power on the strata corporation may deter self-government for a considerable time after sales commence. His voting strength may come about both because of his ownership interest and his mortgagee's interest in units, and may allow him to elect the entire board. The Ontario and Prince Edward Island statutes address the problem by requiring dissolution of the existing board and election of a new one when the developer ceases to have majority ownership, but the drawback to this approach is that the developer may maintain decisive power even when he loses majority ownership. The British Columbia approach is probably more effective in at least requiring that all strata council members be owners, preventing the developer from stacking the council with cronies who are not owners. If the effect of the definition of "owner" in the B.C. Condominium Act is that the corporate developer if elected occupies its seat on the strata council as a corporation, then only one seat can be held per corporation. This would appear to be desirable from the purchaser's point of view and should be clarified. The purchaser's position is also strengthened if the mortgagee's ability to vote is limited in scope as it is under s.18(1) of the B.C. Condominium Act, although it could be argued that the scope of s.18(1) is so broad that the mortgagee could exercise his vote in almost any situation. An appropriate limitation might be, however, to prevent the mortgagee from voting in elections to the board.
To allow the developer to cast his vote in the condominium corporation in any way which protects his own business interests certainly seems commercially reasonable. It seems clear at least in the context of company law, though, that a developer cannot effectively cast his vote on the strata corporation to exonerate his bad faith as a director. Company law places some constraints on the voting rights of a shareholder – to exercise the vote for a proper corporate purpose and not to injure other members of benefit extraneous interests. The courts may be prepared to transpose this duty to condominium law the same way that they have with fiduciary duty. Clarification of rights and remedies could be achieved by inclusion of a right to bring an action on the grounds of oppression, which will be discussed in Chapter IV.
IV CONSTRAINTS ON THE PURCHASER

It has already been demonstrated that disclosure plays a key role in consumer protection for the condominium purchaser. Many jurisdictions have statutes which ensure that the purchaser is informed in connection with important aspects of the development prior to purchase. If the purchaser relies on the disclosure and finds that the groundrules or parameters of the condominium project change after he purchases, he may feel that he has been seriously misinformed or misled.

Condominium life may be described as combining the worst aspects of ownership with the worst aspects of being a tenant. This is because the condominium owner bears the expense of taxes, maintenance and utilities as would the owner of any other type of property, but his freedom of action with respect to use of his property is subject to the dictates of the owners as a whole. While it would be expected that powers of the condominium corporation to regulate and manage the common property would be very broad, in all jurisdictions in Canada the strata corporation also has some power to intrude on the owner's management of his own property. Legislation in the various jurisdictions does, however, vary significantly in how far the purchaser's autonomy can be interfered with, how easily constraints can be imposed or changed, and what legal grounds of complaint the unhappy purchaser might have.
A. Effect and Alteration of Regulation

An example of a constraint which causes purchasers to complain is the imposition of a restriction of leasing, which may limit the marketability of the purchaser's unit and certainly destroys its revenue-producing potential. The rationale used to justify the imposition of restrictions on leasing is that tenants, in general, are considered less responsible occupants than owners and less likely to maintain their units in a desirable manner. In order to preserve property values and harmonious living there may be a desire to apply limitations on the proportion of units which may be leased. The imposition of leasing restrictions can be a devastating blow to the owner who purchased a unit as an investment, either before the restrictions were imposed or unaware that the restrictions existed, and now finds that the reason for ownership has been frustrated. Rental limitations could be equally devastating to the owner who purchased the unit to occupy it himself but now finds he is unable to do so because his employment or other circumstance forces him to live elsewhere. In either case the owner who finds that he cannot rent the unit to a tenant will probably have to sell.

Another example of a measure which might aggravate a purchaser would be a decision to impose uniformity on the appearance of units, for instance requiring a certain type of blind to be used on windows. Not exactly a constraint, but certainly a measure which might alter a purchaser's expectations is a decision to acquire common property or assets, such as recreation facilities. Such decisions can be
costly for purchasers and are a frequent ground for complaint. Certainly political considerations play a key role in determining whether the condominium corporation would be able to take any of the steps outlined. It is relevant also to compare the legal possibilities and hurdles facing the condominium corporation in the various provinces.

Groundrules concerning a purchaser's use of his condominium come about by the provincial condominium statute, the condominium project's declaration, its bylaws and its rules. In some provinces the condominium project is founded on a declaration registered by the developer. The declaration may contain a detailed framework for the development, which usually cannot be made or altered without something more than a majority vote. Some provincial condominium statues incorporate standard form bylaws as the initial bylaws of each condominium corporation. In the provinces where the declaration forms the framework, bylaws can supplement that basic framework. In most provinces rules can also be instituted, but these are of relatively minor significance and can be altered easily. Declaration, bylaws and rules must accord with the relevant statute.

The declaration forms the framework of the condominium project in Manitoba, Ontario, New Brunswick, Nova Scotia, Newfoundland and Prince Edward Island. The simplest scheme is in Newfoundland. The condominium is founded on a declaration which shall contain, inter alia,
"provisions relating to any limitations on use or special restrictions or obligations to be imposed on the owner of any unit or with respect to the unit or any common elements."

Section 5(4) says:

(4) Subject to any general or specific limitation provided in the regulations, nothing in this section shall prevent an owner from incorporating within the declaration any matter or thing, or showing upon the plan such information, respecting the property, the units or common elements or affecting the owners of the units, if such matter, thing or information is pertinent to the creation or proper use of the units or relates to the mutual interests in the common elements or the use thereof and does not conflict with any of the provisions of this Act.

Under s.7(1) of the Newfoundland Condominium Act the declaration can be amended only with the consent of all owners and encumbrancers, or, if unanimity is not possible, an application to the Supreme Court may be made under s.7(2) for an order dispensing with consent. The judge may make the order if he is satisfied that it is "fair and reasonable, and is not prejudicial to the holder of any encumbrance" and that not less than 80% of the owners concur. Bylaws can be passed with 2/3 of the members or such other fraction as is specified in the declaration approving, provided the bylaws are not inconsistent with or repugnant to the Act or declaration, but only for the following purposes:

14.-(1) The corporation may, on a resolution of not less than two-thirds of its members or such other fraction as is specified in the declaration, make by-laws not inconsistent with or repugnant to this Act, the regulations or the declaration

(a) governing the use, maintenance, management and administration of the property and assets of the corporation;
(b) respecting the use of any of the units for the purposes of preventing unreasonable interference with the use and enjoyment of the common elements and other units;

(c) respecting the composition and appointment of a board of directors, fixing the terms of appointment and establishing rules of procedure, fixation of quorum and other matters deemed necessary for the proper functioning of such board;

(d) respecting the voting rights of the members of the corporation;

(e) specifying the functions and duties of the corporation and the board of directors;

(f) providing for the assessment, collection and disbursement of contributions from owners of the units relating to the common elements;

(g) respecting mutual insurance coverage on the property, units and common elements and the application of the proceeds of insurance; and

(h) covering any other matter respecting the conducts and affairs of the corporation.

The Newfoundland Condominium Act does not provide for the making of "rules" on a vote of a smaller majority, or by the condominium corporation, as do the condominium statutes of many of the other provinces.

Would the kinds of decisions described above be possible in Newfoundland and if so, how would they be effected? There is no express power contained in the Newfoundland Act for the corporation either by declaration or by bylaw to restrict leasing. Could a restriction fall under s.5(1)(d) as a limitation on use or special restrictions or obligations to be imposed on the owner of any unit, or under s.5(4) as a matter pertinent to the "creation or proper use" of the unit? According to the Newfoundland Interpretation Act

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"S.17 Every Act and every regulation and every provision of an Act or regulation shall be deemed remedial and shall receive such fair, large and liberal construction and interpretation as best ensures the attainment of the objects of the Act, regulation, or provision according to its true intent, meaning and spirit."

A very similar issue arose in the Ontario case of Re Peel Condominium Corporation No. 11 and Caroe. The condominium declaration said that a unit could only be occupied by the owner, his family and guests. The restriction was said to be justified because the Ontario Condominium Act, as it then stood, under s.3(2)(c), said the declaration could contain "provisions respecting the occupation and use of the units and common elements."

Galligan, J. said:

"If the declaration is given the meaning which the applicant contends it ought to be given, then as a practical matter there would be a substantial restriction imposed upon the very nature of the ownership that rests in the owner. One of the fundamental incidents of ownership is the right to alienate the property that one owns. With respect to real property the right to freely alienate dates to 1290, when the Imperial Statute of Quia Emptures, 18 Edw. 1, was enacted. The provisions of that statute were made part of the law of Ontario in 1897 [R.S.O. 1897, c. 330]. (See Anger and Honsberger, Canadian Law of Real Property (1959), p. 21)

.... Jowitt, in the Dictionary of English Law, at p. 1281, considered the nature of ownership in the following terms:

Ownership is essentially indefinite in its nature, but in its most absolute form, it involves the right to possess and use or enjoy the thing, the right to its produce and accessions, and the right to destroy, encumber, or alienate it;

(The emphasis is mine.)
One of the important forms which alienation of one's property takes is leasing or renting of the property. As was said by Pearson, J., in Re Rosher (1884), 26 Ch.D 801 at p. 818: "There are various modes of alienation besides sale; a person may lease, or he may mortgage, or he may settle." The right to lease one's property is therefore one of the important ingredients of absolute ownership.

A declaration under the Condominium Act is a creature of that statute and is therefore prescribed by it. In my view, a declaration may only restrict rights and impose duties if the statute authorizes it to do so, Section 3 of the Condominium Act provides for the contents of a declaration. The only part of that section which I think is relevant to the issue before me is s.3(2)(c), which reads as follows:

3(2) In addition to the matters mentioned in subsection 1, a declaration may contain:

(c) provisions respecting the occupation and use of the units and common elements.

It is necessary to consider whether that section authorizes a declaration to impose a serious restriction upon the fundamental and long established right of an owner to alienate his real property. Statutes which themselves encroach upon the rights of a subject are subject to strict construction. I think it also appropriate to strictly construe a statutory provision which may permit the encroachment on or restriction of the rights of the individual. The tenet of interpretation has been admirably expressed in Re Stronach (1928), 61 O.L.R. 636 at p. 641, [1928] 3 D.L.R. 216 at pp. 219-20, 49 C.C.C. 336, as follows:

"Statutes which encroach on the rights of the subject, whether as regards person or property, are similarly subject to a strict construction in the sense before explained. It is a recognized rule that they should be interpreted, if possible, so as to respect such rights. It is presumed, where the objects of the Act do not obviously imply such an intention, that the Legislature does not desire to confiscate the property, or to encroach upon the right of persons; and it is therefore expected that if such be its intention, it will manifest it plainly, if not in express words, at least by clear implication, and beyond reasonable doubt:" [Maxwell on the Interpretation of Statutes, 6th ed., p.501]
Considering s.3(2)(c) of the Condominium Act in that light, it is obvious that the intention of the Legislature was to authorize a declaration to make certain reasonable restrictions on the occupation and use of the units. That section would obviously authorize the declaration to provide for single family occupancy or prohibit the use of a unit as a business premises and the like.

What I cannot see in that section is any clear indication of legislative intention, to restrict that fundamental right of an owner to alienate his property. I do not think that the Legislation had any intention to restrict the owner's right of alienation and had it intended to prohibit an owner from renting his property I would have expected it to have said so in clear, unambiguous language."

Section 5(1)(d) of the Newfoundland Condominium Act allows the declaration to contain a provision relating to a "limitation on use" of any unit. While that comes closer to authorizing a provision restricting leasing than did s.3(2)(c) of the Ontario Condominium Act considered in the Re Peel Condominium Corporation No. 11 case, Galligan J. said in that case that the Legislature would express itself in clear and unambiguous terms if it intended to interfere with the owner's right of alienation and it is submitted that the wording of s.5(1)(d) of the Newfoundland Act falls short of the requisite clarity, nor is there any bylaw which could be passed under s.14(1) which could achieve the purpose. An attempt by the condominium corporation to restrict the owner's right to lease would therefore be ultra vires.

A decision to impose uniformity of appearance on the units would have to be justified as falling under s.5(1)(d) as part of the declaration. Would a requirement that a certain type of window blind be used be an "obligation to be imposed on the owner of any unit or with respect to the
unit"? It would seem that an ordinary interpretation of the word "obligation" would equate it with requirement and that such a requirement would properly fall under s.5(1)(d). The requirement would not properly be the subject of a bylaw under s.14(1). As part of the declaration the purchaser would either have access to information about the existence of the requirement before purchase or would, except in exceptional circumstances, have to consent to its imposition. A decision to add to common property or assets would, in Newfoundland, fall under the general powers of the members of the corporation and could be made by majority vote, or depending on the bylaws of the corporation, by the board of directors on behalf of the corporation.

The relevant sections of the condominium statutes in New Brunswick, Manitoba, Nova Scotia, Prince Edward Island and Ontario, correspond quite closely with each other in matters relating to the declaration, bylaws and rules. The condominium is founded on a declaration which "shall" contain certain basic information and "may" contain other provisions, some of which might interfere with an owner's autonomy. The declaration can be amended only with the consent of all owners and encumbrancers. Bylaws supplement what can be done by the declaration by their scope is established by the appropriate section in the relevant statute, and bylaws must be reasonable and in accordance with the Act and declaration. Bylaws can be passed, deleted or altered by a 66-2/3% vote of the condominium corporation. Rules can supplement what can
be done by bylaw, and can be passed by a majority vote at a meeting (or by the board on behalf of the corporation), but only regulate use of the common property. Rules must also be reasonable.

A restriction on the owner's ability to lease his unit can be justified in New Brunswick under s.3(2)(d) of the New Brunswick Condominium Act which says the declaration "may" contain "provisions restricting gifts, leases and sales of the units and common interests." The itemization of what can be done by bylaw, as opposed to declaration, does not specifically include the right to restrict alienation. A restriction contained in the declaration can be amended only with unanimous consent. A requirement as to uniformity of appearance of the units could only be justified as part of the declaration, falling under s.3(2)(c):

"(c) provision respecting the occupation and use of the units and common elements"

or as part of the bylaws, falling under s.10(1)(d):

"(d) regulating the maintenance of the units and common elements."

It is submitted, though, that such a requirement would fall under neither. The Houghton Mifflin Canadian Dictionary of the English Language defines "occupation" as "the act or process of holding or possessing a place"; "use" as "to bring or put into service; employ for some purpose"; and "maintenance" as "the work of keeping something in proper condition" and a requirement that units have, for instance, a uniform type of blind would not, except on a very stretched interpretation, be included under any of the above terms.
Under s.14(1) of the New Brunswick Act a decision to make a "substantial addition, alteration or improvement to or renovation of the common elements" or a "substantial change in the assets of the corporation" requires an 80% vote of members, while other changes can be made on a 51% vote. A decision to build an expensive recreation centre would, therefore, require an 80% vote. Section 3(2) does say that the declaration may contain; inter alia:

"(i) a specification of the majority required to make substantial changes in the common elements and the assets of the corporation",

which suggests that the declaration could specify a different percentage than that required under s.14(1). Section 14(3) says that the declaration may say that if a substantial change in the common elements or assets is made, the corporation must purchase the unit of anyone who dissents.

The provisions of the Manitoba Condominium Act which relate to the matters mentioned above are almost identical to those in effect in New Brunswick, except that in Manitoba it is not possible for the corporation to make rules. The Nova Scotia Condominium Property Act corresponds to the New Brunswick Act in all material respects.

The relevant provisions of the Prince Edward Island Condominium Act are also very similar to those in effect in New Brunswick, except that under s.3(1) a Prince Edward Island declaration "shall not" be registered "unless" it contains much of what "may" be contained in a New Brunswick
declaration. This has the apparent effect of requiring the declaration to contain, for instance,

"(i) provisions restricting gifts, leases and sales of the units and common elements."

although this is surely not what was intended by the Legislature, and almost certainly a court would say that a statement that there are no such restrictions would suffice.

The Ontario Condominium Act sets up the most complicated system for establishing the ground rules of the condominium corporation. The Ontario declaration will be quite similar to one in New Brunswick, although the range of stipulations which "may" be contained in it is not quite as great. As in New Brunswick, the declaration may contain, inter alia,

"(b) provisions respecting the occupation and use of the units and common elements" and

"(c) provisions restricting gifts, leases and sales of the units and common interests"

and the declaration can be amended only with unanimous consent of all owners and mortgagees.

Bylaws can do basically the same things in Ontario as in New Brunswick, but, in contrast, bylaws can be passed by the board. A bylaw passed by the board is not effective until confirmed by a 51% vote of owners. There is another category of "special bylaw" required for such things as leasing common elements. A "special bylaw" is passed by the board and confirmed by owners who own at lease 2/3 of the units. Bylaws must be reasonable and in accordance with the Act and declaration, and the board can pass rules
relating to the common elements. As in Prince Edward Island, the Ontario owner who objects to a substantial change in the common elements or assets has the right to have his unit purchased by the corporation.

Condominium projects in British Columbia, Saskatchewan and Alberta are founded on a plan and not a declaration. The bylaws contain the groundrules, which in each province have a similar sweeping scope - "to provide for the control, management, administration, use and enjoyment of the units and of the common property. In none of these provinces is there any legislated requirement that the bylaws be reasonable.

One should consider whether there is any basis on which to infer a requirement that bylaws be reasonable. The wording of the condominium statutes of British Columbia, Alberta and Saskatchewan suggests that the nature of bylaws is contractual. Section 28(4) of the B.C. Condominium Act says:

(4) In the case of a strata corporation administering a strata lot, the bylaws shall not be amended unless the changes are made as specified in the bylaws, or a strata council has been elected and the changes have been approved by a resolution passed at a properly convened meeting of the strata corporation, of which at least 14 days notice specifying the purpose of the meeting has been given in the same manner as notice is required to be given of a special resolution, by not less than 3/4 of the votes of the other owners of strata lots entitled in each case to vote on it under this Act or by the bylaws and who are present at the meeting in person or by proxy at the time the resolution is passed.

and the wording of s.26(5) of the Alberta Condominium Property Act and s.20(6) of the Saskatchewan Condominium Property Act is almost identical. The Courts have been
reluctant to interfere with or rewrite contracts entered into voluntarily between parties of full capacity. On the other hand, where, as in the case of exemption clauses, one can argue that the party on whom the term was imposed really did not negotiate the clause and had no choice but to accept it, the Courts have used approached such as strict construction to avoid the effect of such a clause. In the case of Photo Production v. Securicor Transport Ltd., Denning M.R. suggests that

"... it is a most unsatisfactory method. It becomes an exercise in semantics only. The Courts twist the natural and ordinary meaning of the words to achieve a result which is fair and reasonable. It would be much better to be straightforward and to ask: is the clause fair and reasonable?"26

Judging exemption clauses by the standard of reasonableness may prove to be the future trend.

As is often the case with exemption clauses, the condominium owner will not have had the opportunity to negotiate which bylaws he will be subject to. Where a particular bylaw was effective at the date of purchase it can be argued that at least the purchaser should have had made himself aware of its ramifications, but in the case of bylaws instituted after his purchase not only is it possible that he did not agree but in fact he may have been vehemently opposed. If bylaws are contractual, there is at least as much justification for judging them by the standard of what is fair and reasonable as there is with exemption clauses.

The B.C. case of Re Scoffield and Strata Corporation N.W. 733 et al may indicate a willingness on the part of the
Courts to impose a requirement of fairness in condominium dealings even where none is specified in the Statute. There the strata council imposed a fine on an owner for keeping a cat, then proceeded to file a lien against her property as security for collection. The owner complained that she had not received notice of the meeting nor had the council informed her that she stood the risk of being fined. Nemetz C.J. B.C., for the B.C. Court of Appeal, said that there were "certain rules of fairness which must be observed" and that the council had not observed them so discharged the owner from the onus of paying the fine. With reference to what those rules are the Chief Justice was not specific; he said only:

"In this case all I will say is that there is a minimal requirement that this lady received some notice to know why the council was meeting and to know that she stood the risk of being fined."30

Seaton J.A. agreed, but relied on the oppression section in the B.C. Condominium Act (which would not be available in Alberta or Saskatchewan). While this case does not deal specifically with the enforceability of bylaws, it could be viewed as demonstrating a general willingness on the part of the courts to intervene to ensure fairness in condominium relationships.

An alternative argument for inferring a requirement that bylaws be reasonable is that condominium bylaws are not really contractual at all, but are more in the nature of subordinate legislation. The essence of a contract is agreement between the parties whereas, because of condominium
statutes, the condominium owner is subject to the edicts of the condominium corporation, whether he agrees to them or not. Because bylaws of the corporations and local governments are in the nature of subordinate legislation, they can be quashed by the Courts on the grounds that they are unreasonable. "Unreasonableness" is not necessarily bad faith, but can consist of an unreasonable exercise of power that the government which passed the statute under which the subordinate legislation operates would be presumed not to have conferred. Whether the real nature of bylaws be contractual or subordinate legislation, a viable argument could be made that bylaws must be reasonable to be enforceable.

Each of these provinces has a standard form set of bylaws which form the bylaws of the condominium corporation until altered or repealed. In B.C. a vote of 75% of the owners present at a meeting is required to establish, alter or repeal a bylaw; in Alberta it is a vote of 75% of all persons entitled to vote and representing not less than 75% of the total unit factors which is required. Saskatchewan has Schedule A bylaws and Schedule B bylaws. Schedule A bylaws contain basic duties of the owner and corporation and procedures for meetings, and can only be altered by unanimous resolution. Schedule B contains some restrictions on the owner's use of his lot and there is no procedure for addition to or amendment or repeal of Schedule B bylaws, so presumably this could be achieved by a simple majority of members voting at a corporation meeting or by the board. In
British Columbia the bylaws can be supplemented by rules passed by a majority, relating to the use of the common property.

The Alberta and Saskatchewan Acts do not allow the condominium corporation to restrict leases. In B.C., however, it is quite feasible to restrict leases in a residential complex. Section 30(2) of the B.C. Condominium Act says that where the strata plan is wholly or partly residential the strata corporation may, by bylaw, limit the number of residential strata lots which may be leased by owners, but under s.32(1) an owner who is prevented from leasing his strata lot because of such a restriction can appeal to the strata council for permission to lease on the grounds of "hardship."

The B.C. Condominium Act gives no guidance on what constitutes "hardship." What comes most obviously to mind is the situation of the owner who purchased when no leasing restrictions were in effect but because of a decision of the condominium corporation subsequent to purchase is now prevented from leasing. In The Owners, Strata Plan No. VR 333 v. Nunns an owner, who had bought his unit as a tax shelter, applied under s.32(1) to lease it on the grounds on hardship. Cowan L.J.S.C. decided that because the bylaw restricting leases had been passed before the owner purchase, he had notice of it and could not complain on the grounds of hardship. In Von Schottenstein v. Owners, Strata Plan 730 the petitioner in the case had bought her strata lot when there were no leasing restrictions in effect. She apparently
planned to occupy the unit when she retired in five years
time, but in the meantime would lease it out; which she
proceeded to do. The strata corporation subsequently passed
a bylaw banning leases of all units except the one owned by
the petitioner. When her lease expired the strata
corporation passed a bylaw prohibiting leases entirely. The
petitioner then appealed to the strata council under s.32(1)
for permission to lease her unit out on the grounds of
hardship, but permission was denied.

The petitioner argued that s.30(1) gives the strata
corporation the power to limit leases, but not to prohibit
them entirely. The Court decided that the effect of any
bylaw passed under s.30 would just be to limit leases and not
to prohibit them because of the avenue of appeal left open
under s.32(1), therefore the strata corporation's actions
were permissible. The petitioner argued hardship on the
grounds that if she could not lease she would have to sell
thereby suffering a loss because of a drop in value of both
the strata lot and the Canadian dollar. Without defining
hardship, Hutchinson LJSC concluded that those circumstances
did not qualify. If subsequent B.C. decisions follow this
one it appears that a strata corporation can effectively
prohibit leasing and that very exceptional circumstances
would have to be shown to make out a case of hardship under
s.32(1).

What those very exceptional circumstances might be is
open to speculation. In both the Nunns and the Von
Schottenstein cases the owners were reluctant to sell their
units because of adverse financial consequences, but the court in effect forced them to sell or leave the units vacant. What might possibly qualify as hardship within the meaning of the Act could be a situation which creates hardship beyond adverse financial consequences, for instance where an owner could demonstrate that he wished to lease only on a very temporary basis because of circumstances he had not planned. The owner might be forced to move for a relatively short time because of his employment, and want to resume occupation of his unit when he returns. He might also be able to demonstrate that it would not be feasible to leave the unit vacant, and possibly his plight would qualify as hardship.

In Saskatchewan, Alberta and British Columbia powers of the strata corporation are very broad and it would appear that the strata corporation would have the power to pass a bylaw imposing a requirement as to say, uniform window blinds. None of these provinces requires more than a majority vote to acquire common property or assets.
B. Recourse

In addition to ensuring some degree of consensus among owners in the form of the vote required to alter the groundrules of a condominium project, some of the condominium statutes incorporate additional protection for the owner. Bylaws in New Brunswick, Nova Scotia, Manitoba, Prince Edward Island and Ontario must be reasonable. There is surprisingly little in the way of case law in Canada on what constitutes "reasonable" in this context, probably because it seems that in order to avoid that problem the developer incorporates any groundrules, where possible, in the declaration. There is no requirement that the declaration be reasonable.

In the Ontario case of Re York Condominium Corp. No. 42 and Melanson the owner kept a dog contrary to a bylaw which said that "no animal shall be allowed upon or about the property." The corporation argued, inter alia, that the bylaw had been passed pursuant to the power to pass bylaws "for the purpose of preventing unreasonable interference with the use and enjoyment of the common elements and other units." Howland J.A., for the Ontario Court of Appeal said:

"The words "no animal" in the prohibitive paragraph are wide enough to include not only cats and dogs but such animals as hamsters, canaries and goldfish. Can it be said that the broad prohibition against any animal being allowed upon or kept in or about the units is for the purpose of preventing unreasonable interference with the use and enjoyment of the common elements and other units? In my opinion it cannot. I am unable to conclude that goldfish, for example, would cause such unreasonable interference. Section 6(2) of the Act makes it clear that subject to the Act, the
declaration, and the bylaws, each owner is entitled to exclusive ownership and use of his unit. One of the incidents of such ownership is the right to keep pets. The declaration does not contain any prohibition against the keeping of animals in the units. It is appreciated that it is important in a condominium development, particularly a condominium apartment building, to prevent the owner of a unit from unreasonably interfering with the use and enjoyment by others of their units and of the common elements. As Driver, Assoc. J., stated in Sterling Village Condominium, Inc. v. Breitenbach (1971), Fla., 251 So.2d 685 at p. 688.

Every man may justly consider his home his castle and himself as the king thereof; nonetheless his sovereign fiat to use his property as he pleases must yield, at least in degree, where ownership is in common or cooperation with others. The benefits of condominium living and ownership demand no less.

The owners of 66-2/3% or more of the common elements may wish to pass a by-law to protect themselves against unreasonable interference by way of vicious, malodorous, dirty or noisy animals, or pollution of the common elements. However, the prohibitive paragraph in question goes far beyond the limited powers in s.10(1)(b) to govern the use of units and would have the effect of prohibiting animals in or about the units which could not be the cause of unreasonable interference.

In my view, the prohibitive paragraph in question, in so far as it governs the use of units, is beyond the powers of the corporation."45

The decision was under the Ontario Condominium Act as it stood in 1975, and since then it has been altered significantly. What one might draw from the decision, however, is that in striking down the bylaw the Ontario Court of Appeal seemed to lean in favour of the individual's right to do as he pleased on his own property and away from the corporation's interest in regulating for the perceived good
of the community in determining what was "unreasonable interference".

The British Columbia owner has the right under s.42 of the B.C. Condominium Act to refer to arbitration or apply to court to prevent or remedy a matter where he alleges:

"(a) the affairs of the strata corporation are being conducted, or the powers of the corporation or strata council are being exercised, in a manner oppressive to one or more owners, including himself, or

(b) that some act of the strata corporation has been done or is threatened, or that some resolution of the owners or class of owners has been passed or is proposed that is unfairly prejudicial to one of more owners, including himself."

While there is no requirement in the B.C. Condominium Act that bylaws be reasonable, s.42 could presumably be used to impugn a bylaw where oppression or unfair prejudice is demonstrated. There is virtually no reported case law on what constitutes "oppression" or "unfair prejudice".

The idea that an owner should have a remedy in these circumstances seems to have been adopted from company law, where common law decisions were ultimately incorporated into statutory form. In the case of Scottish Co-operative Wholesale Society Ltd. v. Meeger, Viscount Simonds described the actions of a shareholder society as "oppressive" where "they had the majority power and they exercised their authority in a manner burdensome, harsh and wrongful." In Re H.R. Harmer Ltd., Jenkins L.J. observes that to show the affairs of a company are being conducted in a manner oppressive to some part of the members "suggests prima facie a
continuing process." He later points out that:

"If there is oppression, it remains oppression even though the oppression is due simply to the controlling shareholder's overwhelming desire for power and control, and not with a view to his own advantage in the pecuniary sense. It seem to me the result rather than the motive is the material thing."50

If we can draw anything relevant to condominiums from these leading cases on oppression it is that the conduct complained of must be continuing, not as the result of a single action, and that it must be seriously wrong, not necessarily in its intent but in its effect on the owner. These requirements seem to be tempered by s.42(b) which allow the owner to complain of an act which is unfairly prejudicial. It seems that under this subsection a single act can be complained of, and it may be that something which is "unfairly prejudical" is not as serious as something that is "oppressive."
C. Conclusions

In assessing the scope and means of establishing the groundrules for the condominium project concerns about consumer protection for the purchaser should be considered. One should take into account what the purchaser's expectations are regarding his condominium and how easily those expectations can be derailed. The purchaser will naturally expect a great deal of regulation as regards use of the common elements, but probably unless informed otherwise before agreeing to purchase expect virtually no interference with use of his own unit.

In the provinces where major regulation is part of the declaration, details of that regulation will be at the registry office for the purchaser to see. (Except in Ontario and Prince Edward Island, though, where there are specific disclosure requirements, the purchaser may not see the declaration before he agrees to purchase). The purchaser is guaranteed that regulation in the declaration cannot change without his approval, because unanimous consent is required. It should be recognized, of course, that this could ultimately work to the disadvantage of the purchaser because it impedes the flexibility of the condominium corporation in regulating condominium life for the common good.

The provinces which have declarations can supplement the declarations with bylaws, and while bylaws are relatively easy to alter, the scope of bylaws is not as broad. A limitation on leasing, for instance, could not be part of a
bylaw in those provinces, the purchaser is also protected by the requirement that bylaws must be reasonable.

In Saskatchewan, B.C., and Alberta the condominium purchaser is entitled to very little certainty in his expectations about the future groundrules of the project. In Saskatchewan and Alberta bylaws cannot restrict leasing or sale but seem to be able to do almost anything else. There is no restriction or exclusion pertaining to what can be included in Schedule B bylaws under the Saskatchewan Condominium Property Act, and a Schedule B bylaw can be established on majority vote. In Alberta a higher plurality is required. The ability to lease his unit may be absolutely fundamental to the B.C. purchaser's intended use for his strata lot, but if the lot is residential he cannot be assured of a continuing ability to do so. Limitations on leasing can be established on a 75% vote of owners who are present at the meeting. There is no requirement that bylaws be reasonable. The B.C. purchaser may obtain some reassurance from the oppression remedy in s.42 of the Condominium Act, but the prerequisites for bringing such an action have not been clearly established, and in any event the cost of doing so in terms money, time and the psychological wear and tear involved in battling with one's neighbours, may effectively negate it as an avenue of recourse.
V ACTIONS AGAINST THE DEVELOPER

The real estate purchaser will find several impediments if he seeks recourse against a developer-vendor on the grounds that his expectations regarding the purchase have not been met. A major hurdle is the almost invariable presence of the exemption clause, which has been referred to earlier. Another major problem which must be grappled with is that in contrast to a transaction involving sale of goods, the courts have generally been most reluctant to import any implied terms into a contract involving sale of real estate, and limitation periods relating to sale of real estate have been unclear. In addition to the impediments facing the purchaser of new construction in a traditional real estate development, the purchaser of a new condominium is faced with special procedural problems in seeking redress against a developer. There may be two aspects to his claim - thwarted expectations relating to his own unit and also relating to common elements. His complaints may be common to a number of owners in the development - but some of those owners may be second-generation purchasers who did not purchase from the developer. An additional complication is the condominium corporation which, while not a limited company, has a mandate to represent the owners in some capacities. Because of the fact that a developer may maintain power in
the development which influences the purchaser's use and enjoyment into the future, there may be additional forms of action against him, such as on the grounds of oppression or breach of fiduciary duty, which would not apply in the purchase of property which is part of a traditional development.

In order to assess the adequacy of purchaser protection in addition to considering a purchaser's grounds for action and procedures for bringing it, one must consider remedies and the venue for such actions. Does the law give the purchaser protection which he can effectively make use of, and is the protection conferred efficiently? Because such disputes often pit neighbour against neighbour, and costs frequently outweigh results, there is a trend in some jurisdictions to finding a forum that is cheaper, speedier and not as adversarial as the Courts.
A. Grounds of Action

The problems of a purchaser seeking to take a developer to task for misrepresentation have been discussed earlier. A major one is, of course, the exemption clause, but the protection afforded by exemption clauses diminishes because of such decisions as *Roberts v. Montex Development Corporation et al.*,¹ which held that the effectiveness of the exemption clause is subject to "inequality of bargaining power" or "inequality of capacity to obtain truthful information". In jurisdictions where statutes force disclosure to condominium purchasers incorrect disclosure may afford the purchaser a remedy under the statute.

The condominium purchaser seeking to sue the developer or builder-developer for construction deficiencies may also have problems. The Courts have been reluctant to pass on the protection of implied terms to the real estate purchaser in the way that they have done with sale of goods. Why that is the case is not clear, but it seems that the reluctance could only be based on some residual loyalty to the doctrine of *caveat emptor* couple with nervousness about the cost of doing so, which cost will inevitably be born by the real estate purchaser.

The first major inroad into the doctrine of "caveat emptor" as it applies to the real estate purchaser was in
the English case of Miller v. Cannon Hill Estates Ltd.\(^2\)

In that case the purchaser was suing the vendor-builder on the basis that the house was "in such a...porous condition that it was quite unfit for human habitation." The purchaser succeeded on the basis that there was an express warranty that the material and workmanship would render the house reasonably fit for habitation. What is important is that Swift J. went on to say that where the defendant is to build a house for the purchaser, the law recognizes an implied warranty that the house be fit for habitation. No such implied warranty will be recognized where the purchaser agrees to buy a completed house, because in the case of a completed house he can protect himself by careful inspection and express warranty.

The distinction between the rights of the purchaser of a completed house and the purchaser of an uncompleted house seems to have been adhered to strictly by Courts in England and Canada, in some instances with results which seem unrealistic. Perry v. Sharon Development Ltd.\(^3\) carried recognition of an implied warranty to a situation where the purchaser executes his purchase agreement while the house is in the course of construction. The Court of Appeal held in that case that where the contract related to a house still in the process of being built, the law would recognize an implied term that the house be complete, ready for occupancy, and fit for human
habitation. The Ontario case of *Croft v. Prendergast* \(^4\) applied the distinction between purchaser protection in the sale of a completed house and purchaser protection in sale of an uncompleted house to a situation where the purchase agreement was signed when the house was 99% complete. Although the case was decided on the basis of an express warranty in the contract, the Court of Appeal said that the purchaser would have been protected by an implied term in any event because the house was not complete.

The Supreme Court of Canada affirmed that state of the law in the case of *Fraser-Reid v. Droumtsekas et al.* \(^5\) The Court was asked to extend recognition of an implied warranty to a purchase agreement for a completed house. The purchaser claimed that the construction of the house was deficient because the vendor-builder had failed to install tiles which would have prevented his basement from leaking. Dickson J. pointed out that the purchaser fell on the wrong side of the line drawn between completed and incomplete houses. The purchaser had asked the Court to abolish the distinction on the basis of logic and accordance with recent American case law. Dickson J. declined to do so, saying,

"The only real question for debate in the present case is whether removal of the irrational distinction between completed and incomplete houses is better left to legislative intervention. One can

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argue that "caveat emptor" was a judicial creation and what the Courts created, the Courts can delimit. But the complexities of the problem, the difficulties of spelling out the ambit of a Court-imposed warranty, the major cost impact upon the construction industry, and, in due course, upon consumers through increased house prices, all counsel judicial restraint.

I would be inclined to reject the proposition advanced on behalf of the appellants for an extended implied warranty. It appears to me at this time if the sale of a completed house by a vendor-builder is to carry a non-contractual warranty, it should be of statutory origin, and spelled out in detail. Even if the Court were to recognize an implied warranty of the amplitude urged by the appellants, here the exclusion clause contained in the agreement they signed is of such breadth that they might well be unable to avail themselves of the warranty." In the circumstances, it is unnecessary to canvass this point.6

The purchaser was, however, successful on the basis of an express warranty by the builder that the house was built according bylaw.

Where the developer is the builder another possible ground of action is in negligence. In Smith and Smith v. Melancon7 Ruttan J. followed the landmark decision of the English Court of Appeal in Dutton v. Bognor Regis United Building Co.8 which extended the principles of negligence enunciated in M'Alister (or Donoghue) v. Stevenson9 from sale of goods to sale of real estate. In doing so he held that an owner who is also a builder can be sued in tort as well as in contract.
One must consider, however, the dicta of Pigeon J. in the case of *J. Nunes Diamonds Ltd. v. Dominion Electric Protection Co.* in which he said that where a contractual relationship exists between two parties, tort liability is precluded for all but "independent torts". This problem was considered by Feehan, J. in *Hansen v. Twin City Construction Co., Ltd. et al.* In that case the vendor built a house for the plaintiff purchaser. The fireplace which the vendor installed was not insulated and not suitable for fires. The purchaser's use of the fireplace resulted in a fire which caused damage to the house. The contract under which the house had been purchased contained a clause which provided:

"...the purchaser has inspected the property and it is agreed that there are no representations or warranties affecting the said property, other than as expressed herein in writing."

Feehan J. says that it was arguable that there had been a fraudulent misrepresentation, on the basis of the latent defect of which the vendor was aware, but as fraud had not been pleaded he did not decide this point. Breach of an implied warranty as to fitness for human habitation or good workmanlike construction did not succeed both because the house was completed at the time the agreement to purchase it was entered into, and because of the exculpatory
clause. Feehan J. found the vendor liable in negligence. He expressed the view that a tort is not independent if liability in question is one contemplated in the contract, and referred to a number of builders' cases where tort liability was placed on the builder in holding the vendor liable to the plaintiff in negligence. Recent Canadian cases seem to open up the possibility of suing a developer-builder in negligence, in spite of the existence of a contract.

In addition to common law rights of action the purchase may have a cause of action under the Housing and Urban Development Institute of Canada (HUDAC)'s voluntary new home warranty programme. Member builders agree to follow certain building standards and the purchaser has a claim against an assurance fund set up to compensate victims of non-compliance. In Ontario membership in such a scheme is no longer voluntary. The Ontario New Home WARRANTIES Plan Act requires vendors and builders to register. The vendor warrants to the owner of the house that it is constructed in a workmanlike manner and is free from defects in materials, that it is fit for habitation, that it is constructed in accordance with the Ontario Building Code, and that it is free from major structural defects. The standard warranty is one year, but is extended to five years in the case of major structural defects.
The issue of limitation periods relating to actions for construction defects seems now to have been settled in Canada by the Supreme Court of Canada in *City of Kamloops v. Nielsen*.\(^1\) Previously there had been two conflicting lines of authority - one established by *Sparham-Souter v. Town and Country Developments (Essex) Ltd.*\(^2\) which said that the limitation period starts to run on the date on which the plaintiff actually discovers the damage or should, with reasonable diligence, have discovered it. The conflicting case was *Pirelli General Cable Works Ltd. v. Oscar Faber & Partners (a firm)*\(^3\) in which the House of Lords said the cause of action accrued when the physical damage occurred to the building, and the limitation period started to run at that point whether or not the plaintiff should have been aware of the damage at the time. In the *City of Kamloops v. Nielsen* case the Supreme Court of Canada adopted the approach taken in the *Sparham-Souter* case. Wilson, J. says:

"There are obvious problems in applying *Pirelli*. To what extent does physical damage have to have manifested itself? Is a hair-line crack enough or does there have to be a more substantial manifestation? And what of an owner who discovers that his building is constructed of materials which will cause it to collapse in five years time? According to *Pirelli* he has no cause of action until it starts to crumble. But perhaps the most serious concern is the injustice of a law which statute - bars a claim before the plaintiff is even aware of its existence.

\(^2\)Sparham-Souter v. Town and Country Developments (Essex) Ltd.  
\(^3\)Pirelli General Cable Works Ltd. v. Oscar Faber & Partners (a firm).
Lord Fraser and Lord Scarman were clearly concerned over this but considered themselves bound by Cartledge. The only solution in their eyes was the intervention of the legislature.

This Court is in the happy position of being free to adopt or reject Pirelli. I would reject it. This is not to say that Sparham-Souter presents no problem. As Lord Fraser pointed out in Pirelli the postponement of the accrual of the cause of action until the date of discoverability may involve the courts in the investigation of facts many years after their occurrence....It seems to me, however, to be much the lesser of two evils.\textsuperscript{17}

The possible right of a purchaser to bring an action against a developer on the grounds of oppression or breach of fiduciary duty has been discussed earlier in this paper.
B. Procedures

Actions against the developer on the grounds of misrepresentation or construction deficiencies will involve either complaints about the condominium units or the balance of the condominium property owned by the owners as tenants in common or by the condominium corporation. In order to assess who has standing to sue, the process involved and the distribution of the fruits of the litigation it is necessary to analyze who actually owns the property which would be the subject-matter of the litigation.

In all the provinces it is clear that the unit belongs to the individual owner, although in all provinces the condominium corporation has some control of the use of the unit either through the bylaws or declaration. The ownership of the balance of the condominium property is not quite so clear. In New Brunswick, Nova Scotia, Prince Edward Island, Ontario, Newfoundland and Manitoba the owners are tenants in common of the "common elements" - defined as "all the property except the units". "Property" is defined as "the land and interests appurtenant to the land described in the description, and includes any land and interests appurtenant to land that are added to the common elements". The ownership of assets of the condominium project, for instance a tractor-type lawnmower or laundry equipment, which do not qualify as fixtures, is not so straightforward. The statutes do provide however, that "the objects of the corporation are to manage the property and any assets of the corporation,"
which suggests that assets which do not qualify as "property" are assets owned by the corporation.

In Saskatchewan, the "common property" is held by the 19 owners of all the units as tenants in common, and "common property" is defined as "so much of the land comprised in a condominium plan as is not comprised in any unit shown in a condominium plan." Nothing in Saskatchewan's Condominium Property Act indicates the ownership of condominium assets which do not qualify as land although the condominium corporation is responsible to "keep in a state of good and serviceable repair and properly maintain the fixtures and fittings, including elevators, if any, used in connection with the common property." The Alberta Condominium Property Act says that the common property is held by the 22 owners of the units as tenants in common and defines "common property" as "so much of the parcel as is not comprised in a unit...." Section 30(1) says:

"(1)A corporation is responsible for the enforcement of its by-laws and the control, management of its real and personal property and the common property." 23

Presumably in Alberta additional land could be acquired by the condominium corporation which was not included in the condominium plan, and both that (and other assets which do not qualify as common property) are owned by the condominium corporation. The B. C. Condominium Act states explicitly that "common property, common facilities and other assets of the strata corporation", which includes everything which could form part of the condominium complex, "shall be held by
the owners as tenants in common in shares proportional to the unit entitlement of their strata lots."

While the ownership of assets other than land is included in the plan or description may be unclear, it is clear that in the main actions against the developer relating to misrepresentation or construction deficiencies will involve property owned not by the condominium corporation but by the "owners" individually or as tenants in common. The condominium statutes in all the provinces allow the condominium corporation some right to bring action involving property owned by the "owners", but whether the condominium corporation's right of action replaces or supplements the right of action of the owner, and whether the condominium corporation sues in a representative capacity or has a substantive right to sue on its own behalf are issues which must be considered.

The provisions of the Condominium Acts of all the provinces but British Columbia and Ontario refer to a right of action of the condominium corporation relating to only the common elements or common property. The relevant sections of the Acts of New Brunswick, Nova Scotia and Prince Edward Island are identical:

"Any action with respect to the common elements shall be brought by the corporation and a judgment for the payment of money in favour of the corporation in such an action is an asset of the corporation."25

Section 13(6) of the Newfoundland Condominium Act is a variation but to similar effect:
"S. 13(6) Any action with respect to, arising from or relating to any common element shall be brought by or against the corporation in its own name, and any judgment against the corporation is also a judgment against the owner of a unit at the time when the action against the corporation was raised for a portion of the judgment debt corresponding to the proportion which is specified in the declaration as the percentage which that common element relates to the unit."26

Section 10(10) of the Manitoba Condominium Act is similar:

"S. 10(10) A corporation shall have a common seal and may sue and be sued; and in particular may bring an action with respect to the common elements and may be sued in respect of any matter connected with the property for which the owners are jointly liable."27

The Condominium Property Acts of Alberta and Saskatchewan have provisions similar to S. 10(10) of the Manitoba Condominium Act, but are somewhat more explicit in describing the types of action which may be brought. Section 16(3) of the Saskatchewan Condominium Property Act says:

"S. 16(3) Without limiting the powers given to a corporation under section 14 of the Interpretation Act a corporation may:

a) sue for and in respect of any damage or injury to the common property caused by any person, whether an owner or not; and

b) be sued in respect of any matter connected with the parcel for which the owners are jointly liable."28

Section 29(3) of the Alberta Condominium Property Act is identical to that section in all material respects.

Until the 1980 revision of the Ontario Condominium Act the provision relating to legal actions by the condominium corporation in effect in Ontario was identical to the sections in the Condominium Acts of Nova Scotia, New Brunswick and Prince Edward Island. The relevant provision
"14.-(1) The corporation after giving written notice to all owners and mortgagees may, on its own behalf and on behalf of any owner, sue for and recover damages and costs in respect of any damage to common elements, the assets of the corporation or individual units, and the legal and court costs in any such actions brought in whole or in part on behalf of any owners in respect of their units shall be borne by those owners in the proportion in which their interests are affected.

(2) The corporation after giving written notice to all owners and mortgagees may sue on its own behalf and on behalf of any owner with respect to the common elements and any units, notwithstanding that the corporation was not a party to the contract in respect of which the action brought in whole or in part on behalf of any owners in respect of their units shall be borne by those owners in the proportion in which their interests are affected.

(3) The notice referred to in subsections (1) and (2) is not required to be given in respect of an action brought in the small claims court.

(4) Any judgment for payment in favour of the corporation in an action brought on its own behalf is an asset of the corporation.

(5) The corporation may, as representative of the owners of the units, be sued in respect of any matter relating to the common elements or assets of the corporation.

(6) Where an action is commenced on or after the 1st day of June, 1979, a judgment for the payment of money against the corporation is also a judgment against each owner at the time of judgment for a portion of the judgment determined by the proportion specified in the declaration for sharing the common interests.

(7) Where an action has been commenced before the 1st day of June, 1979, a judgment for the payment of money against the corporation is also a judgment against each owner at the time the cause of action
arose for a portion of the judgment determined by the proportions specified in the declaration for sharing the common expenses."

Section 15 of the B. C. Condominium Act is quite different from S. 14 of the Ontario Condominium Act, but in common with Ontario confers on the condominium corporation a broader right to sue than is in effect in the other provinces.

"15. (1) A strata corporation may, as representative of the owners of the strata lots included in the strata plan,
(a) bring proceedings for damages and costs for any damage or injury to the common property, common facilities and the assets of the strata corporation caused by any person; and
(b) be sued on any matter relating to the common property, common facilities or assets of the strata corporation.

(2) A judgment against the strata corporation is for all purposes a judgment against the owners of the strata lots included in the strata plan in amounts proportionate to their unit entitlements shown on the strata plan, and execution may be made accordingly.

(3) Where judgment against the strata corporation relates to the limited common property, the judgment shall be deemed to be against the owners who are entitled to use the limited common property in the unit entitlement proportion.

(4) The strata corporation may join, in proceedings against it, an owner whose act, default or omission gave rise to the claim against the corporation.

(5) Except as provided in subsections (2), (3) and (4), an owner has no personal liability for damages relating to the use of the common property, common facilities or the assets of the strata corporation, for damages caused by the corporation, or for a contract made, or debt or liability incurred, by the corporation.

(6) An owner may sue the strata corporation about any matter relating to the common property, common facilities or the assets of the strata corporation.
(7) The strata corporation may sue on its own behalf and
(a) on behalf of an owner about matters affecting the common property, common facilities and other assets of the strata corporation; and
(b) if authorized by special resolution of the strata corporation, on behalf of those owners who consent in writing to the strata corporation so doing, about matters affecting individual strata lots notwithstanding that the strata corporation, in the case of a contractual claim, was not a party to the contract about which the proceeding is brought.

(8) The legal or court costs in a proceeding brought in whole or in part on behalf of owners on a matter affecting their strata lots shall be borne by the individual owners in the proportion in which their interests are affected."

There are a number of Canadian cases which have considered the scope of the condominium corporation's right to sue, but reasoning and results conflict and no clear line of authority has yet been established. The starting point for analysis is to agree with Henry J., in York Condominium Corporation No. 148 v. Singular Investments Ltd., when he states:

"The first issue is whether the condominium corporation, which is constituted as such by virtue of the Condominium Act, R.S.O. 1970, c. 77, has status to bring a class action on behalf of itself and all unit owners. In my opinion, the corporation does not have status to do this. Fundamental to the authority of the corporation is S. 9 [am. 1974, c.133, s. 5][32] of the Act that I have cited. I point out that the condominium corporation is entirely a creature of the statute, set up in accordance with the scheme of the Act to perform certain functions. These need not be elaborated; I need only point out that the corporation, being entirely a creature of statute gives to it and s. 9(3) makes it clear that the Business Corporations Act and other statutes do not apply to this corporation."33

The condominium corporation, not being the owner of the units, has no right to bring action in respect of them, and
because not authorized to do so in the Act, has no status to bring a representative or class action on behalf of the members of the corporation who are the owners of the units. Henry J.'s reasoning was consistent with an earlier Ontario High Court decision in \textit{Frontenac Condominium Corporation No. 1 v. Joe Macciocchi & Sons Ltd.} in which Cromarty J. took pains determine the exact boundaries between the condominium units and the common elements, allowing the condominium corporation to recover damages relating only to shortcomings in the common elements. In all provinces but British Columbia and Ontario, then, the condominium corporation has no right to bring action against the developer relating to the individual units, and owners would have to pursue complaints on their own.

Could an owner, or group of owners, bring a class action arising out of deficiencies common to all the units? The first problem would be in properly defining the class. While the deficiencies may be common to all the units, the cause of action may not be. A claimant in an action for misrepresentation or for breach of contract arising out of either express or implied warranties would have to show that he does, in fact, have a contract with the developer. The right of action would not be available to a subsequent purchaser - one who did not purchase directly from the developer. A further problem is that an implied warranty as to fitness for human habitation and good, workmanlike construction only applies where the purchaser has entered

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into his contract of purchase when the unit was in an incomplete state. If the complaint were deficiencies and the cause of action were the implied warranty the class would have to be defined as those owners who contracted with the developer while their units were incomplete, and those owners would have to be identified.

A further problem in bringing a class action in these circumstances is raised in York Condominium Corporation No. 148 v. Singular Investments Ltd. Henry J. cites Farnham v. Fingold as establishing the proper basis for bringing a class action. There Morand J. said that in order to bring a class action:

(1) The class must be properly defined;
(2) all members must have a common interest;
(3) breach of the obligation is a wrong common to all;
(4) the damage suffered is the same to all except in amount;
(5) the relief sought is beneficial to all;
(6) none of the members of the class has an interest antagonistic to any other members.

Henry J. was of the opinion that there are at least two of the above elements mentioned missing in a condominium of the type mentioned. The first is (3). Henry J. says:

"It cannot be said that the breach of obligation is a wrong common to all because it must be self-evident that in respect of the individual owners there may be various breaches of their contracts with the builder and if negligence appears, various acts of negligence which may be said to be individual but not common to all. So far as I can see the only area in which the damage would be common to all would be with respect to the common elements which is property held by all the owners as tenants in common."
The other reason why the condominium action relating to deficiencies in the units would not fall under the principles of *Farham v. Fingold* is that, according to Henry J., the fourth criterion is not satisfied. He says:

"If I could briefly summarize the thrust of the authorities cited by Morand J., it is this: that the class action is designed to create a fund which will normally be identified as a global amount of damages in which all those who are members of the class will have some interest to greater or lesser degree, but that the division of the fund among them will be a matter to be determined by some mechanisms set up under the supervision of the Court. This is quite different in my view from the creation of such a fund by determining the individual amounts of damages suffered by the members of the class which must be determined before the total fund can be identified; moreover, in the determination of that particular series of issues, the Court may be called upon to deal with distinct relationships in law, whether it be contract or tort, as between the defendant and the individual owners. In the circumstances it appears to me that the matter does not fall within the concept of a class action at all."40

The type of claim which would qualify under the fourth criterion according to the authorities, he says is, for instance, a shareholder's action relating to a conspiracy where damage is the gross premium above market price received by the controlling shareholders on the sale of their shares, and the individual is entitled to a pro rata share of the global amount.

There have been a number of cases in which the authority of the condominium corporation to bring action has been considered, but those cases deal, in the main, with whether the condominium corporation has a representative or substantive cause of action respecting the common elements and whether an action brought by the condominium corporation
replaces the owners' right of action. Henry J.'s reasons for rejecting a class action relating to deficiencies in the individual units was cited with approval by Gray, J. in Loader et al. v. Rose Park Wellesley Investments Ltd. et al.; and in York Condominium Corporation No. 228 et al. v. Tenen Investments Ltd. et al. Counsel conceded that no class action would lie for damages to the individual units. There appears to be little doubt then, that there is no right to a class action for deficiencies in the units unless the condominium statute grants that right. The Condominium Acts of B.C. and Ontario do now give the condominium corporation the ability to bring action in respect to units.

All the provinces give the condominium corporations the ability to bring action respecting the common elements even though the common elements are owned by the owners of the units. Does the condominium corporation's right to bring action replace the right of the owner or merely supplement it? This question was considered in Loader et al v. Rose Park Wellesley Investments Ltd. et al., which was also decided under the pre-1980 Ontario Act. There the plaintiff purchasers were suing on their own behalf and on behalf of all persons who had purchased new condominium units in the project from the developer. Gray J. referred to the decision of Henry J. in the York Condominium Corporation No. 148 v. Singular Investments Ltd. case as support for his conclusion that an owner had no right to bring a class action in respect of the common elements for the same reason that he
had no right to bring a class action in respect of the units - that the circumstances of the cases do not meet the
criteria for class actions. Henry, J. said, in the Singular case, that:

"It might be supposed that the question could be raised whether, with respect to the common elements, the owners of the units as tenants in common might bring a class action, but the Legislature has seen fit to dispose of that problem by providing, as I have said in s. 9(18), that an action with respect to the common elements may be brought by the condominium corporation. So far as I have been able to determine, with the assistance of counsel, there is no other provision in the statute that authorises the corporation to engage in litigation at all.

The Legislature has therefore singled out the circumstances of litigation concerning the common elements and has provided that the corporation may bring that action. The corporation is given no status to bring that action on behalf of anybody else. It merely sues in its own name and, as provided by subs.(18) a judgment for the plaintiff for money in favour of the corporation becomes an asset of the corporation. As such it is obviously, under the scheme of the statute, under the control of the members who are the unit owners and who participate in the control and management of the corporation in accordance with the statutory scheme.

I conclude therefore, to terminate this part of my reasons, that there is no authority on the part of the condominium corporation created by this statute which includes the corporate plaintiff in this action, to bring proceedings on behalf of any person other than itself, or in a representative capacity. It therefore has no status to bring a class action on behalf of unit owners."46

He concluded, therefore, that the condominium corporation
sues in its own right and not in a representative capacity.

Gray J., in the Loader v. Rose Park Wellesley case
moves from Henry J.'s observations to this conclusion that:
"I am of the opinion that s. 9(18) of the Condominium Act, which permits the condominium corporation to bring an action in respect of the common elements precludes the right of unit owners to bring a class action for themselves and all other unit owners in respect to the common elements. It is clear that the Condominium Act sets up a statutory scheme by which the fruits of any litigation in respect of the common elements will be equitably distributed amongst all the unit owners. Furthermore, the condominium corporation is created to represent the best interests of the unit owners and since it is a creature created to represent their interests and is controlled by them, it seems to me that it is the only proper party to bring such an action. In some situations, permitting a class action to proceed under Rule 75 may actually conflict with the right of a condominium corporation to bring an action in respect of the common elements. For example, in this case, the action is being brought only on behalf of the original purchasers of the individual units. The benefit of the terms claimed in para. 6 of the statement of claim that the building and condominium units will be completed in a good and workmanlike manner may only be claimed by the original purchasers. If this action is permitted to proceed, it will benefit only a select group of the individual owners in the condominium and the others will be excluded. Presumably the damage sustained to the common elements affects all the owners in a condominium complex. Consequently, the owners of individual units, who did not purchase their units directly from the builder, have no remedy in law for any damage sustained to the common elements except through that given to them by virtue of s. 9(18) of the Condominium Act. If a suit were brought under s. 9(18) of the Condominium Act, it would be a difficult question indeed to determine the rights of the unit owners who have already benefited from the class action. It appears to me that should the class action be permitted to proceed and succeed, there is a possibility the unit owner could recover twice by virtue of the distribution scheme provided for in the Condominium Act. When the condominium corporation sues in respect of the common elements, the Act provides that the fruits of litigation will become an asset of the corporation and will be distributed to the unit owners according to their share in the common elements. Under the Act, benefits of such litigation cannot be restricted to those who have not benefited from the class action."48
In summary, then, because of the wording of s. 9(18) and practical considerations Gray J. concludes that the right of the condominium corporation to bring action in respect of the common elements completely supplants the right of the individual owner, or owners, to do so. It is submitted that the reasoning of Henry J. in the *Singular* case does not necessarily support that result. The proper interpretation could be that he is saying that if there is a class action it is to be brought by the condominium corporation, but that he does not preclude the possibility of an owner or group of owners bringing action on their own behalf.

If Gray J. is right in his conclusions, then because the Ontario and B. C. Condominium Acts now give the condominium corporation the right to sue in respect of the units, the individual owner may now be precluded from suing even in respect of his own unit. It should be noted, however, that under the B. C. Condominium Act the ability of the corporation to sue in respect of a unit comes into effect only if authorization is obtained by way of special resolution, which might be good grounds for concluding that if a special resolution cannot be obtained, the legislature intended that the owner would be able to do so in his own right.

The reported decisions diverge from each other on the issue of whether the condominium corporation has a substantive right to sue, or whether it merely inherits the claims which could have been brought by its members. In *The Owners, Strata Plan No. VR 36 v. Marathon Realty Limited, et*
the strata corporation was suing the developer for negligence and breach of contract for construction defects. The issue before the British Columbia Court of Appeal was whether the developer could examine the individual owners for discovery as the action had been brought by the strata corporation on behalf of the owners. The strata corporation claimed that, at least as far as the common property was concerned, the strata corporation had its own cause of action under the Act and discovery of the individual owners was not appropriate because they were not parties. The British Columbia Court of Appeal decided that, as far as the contractual claims were concerned, the strata corporation has no independent cause of action and is empowered to sue just to overcome the difficulties of a class action. According to Seaton J.A.:

"In the British Columbia legislation it appears that the remedy has been to permit the strata corporation to take the action on behalf of an owner.

There will be other circumstances, and they exist in this action, in which the corporation can sue on its own behalf. But insofar as the action is based on the contract of purchase, I see no basis for finding that the corporation is given the cause of action. It is the individual owners with their individual contracts that hold the claim with which we are now concerned. The contracts may well differ from owner to owner. If it were not for s. 15(7), each owner would have to be a plaintiff in an action. The difficulties of a class action are fully canvassed in the articles I have already mentioned. To overcome some of the problems, the corporation was empowered to sue on behalf of the individual owners. But that is as far as the legislation goes."
Those original purchasers who had a cause of action and might have sold their unit for less because it was worth less by reason of the misrepresentation or breach, could have retained their cause of action. They may still have a claim. The buyers from those owners would appear to have no claim against this appellant for breach of contract or misrepresentation. It seems probable that it is only those present owners who purchased from this appellant who have a cause of action in contract, notwithstanding that the statement of claim is offered on behalf of all owners."51

The Court made no finding as to who would be entitled to sue for negligence.

A contrary view seems to be expressed by Gray J. in  
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Loader v. Rose Park Wellesley Investments Ltd. He comes to the conclusion that individual owners cannot bring actions relating to deficiencies in the common elements because that would mean that only some owners will have a right to bring action under the implied warranty that the building would be completed in a good workmanlike manner i.e. only those original owners who entered into contracts of purchase before the building was complete. If individual owners were allowed to proceed only a select group of owners would be benefitted and the rest would be excluded. By virtue of s. 9(18) of the Ontario Condominium Act, he says, those owners of individual units who did not purchase their units directly from the builder have a remedy in law for damage.

York Condominium Corporation No. 76 v. Rose Park Wellesley Investments Ltd. et al. was also decided under s. 9(18) of the pre-1980 Ontario Condominium Act and reaches the opposite conclusion. The plaintiff condominium corporation sued for damages to repair a parking garage which was part of
the common elements, claiming breach of contract on the part of the developer. The plaintiff said that s. 9(18) gave a statutory cause of action which "stems from and rests upon the contracts entered into between the original unit purchasers and the developers." The members of the condominium corporation at the time the action was brought included 600 original purchasers. In spite of the fact that 800 members of the condominium corporation had no contract with the developer, the plaintiff maintained that it could claim as damages the total amount required to repair the parking garage. Reid J. had to consider the earlier decision of Gray J. in the Loader v. Rose Park Wellesley case. Gray J. had relied on the following observations of Cromarty J. in Frontenac Condominium Corporation No. 1 v. Joe Macciochi & Sons Ltd.:  

"Having concluded that the plaintiff can properly sue for any shortcomings in the common elements, it must then be shown that it has some cause of action upon which to sue. It seems to me that the cause of action must be found in one or more of the owners of the common elements. If none of them had a cause of action then there would be nothing upon which the plaintiff could bring action."  

Gray J. took this to mean that the right of the condominium corporation to sue on behalf of the original purchasers meant that the corporation could also sue on behalf of the purchasers who had no contract with the developer. Reid, J. disagreed with this interpretation. He says:  

"My difficulty stems from the fact that Gray J. did not describe or explain what was the nature or source of the "right" to be asserted on behalf of a subsequent owner. In Frontenac, Cromarty J. held
that if the original purchasers had no cause of action the corporation had none. Thus, the source of the rights to be asserted was the contractual relationship between original purchasers and developers or an implication arising from it, by way, say, of warranty.

Plaintiff relied on Loader for a reading of s. 9 (18) that would confer not only a procedural facility for those who had existing rights to assert independent of the statute but new substantive rights on those who had none, i.e., contractual rights without any contract. To place the subsequent owners in the same position as original purchasers it would be necessary to create a fictional contract written in the terms of the one common among the original purchasers and the defendants. The effect of that would be not only to create contractual rights where none existed, in favour of subsequent owners, but to create contractual obligations on the developers where none existed.

It may be that the Ontario Legislature has the capacity to enact such extraordinary legislation but I cannot read the legislation before me as either achieving that result or disclosing an intention to do so. So remarkable a departure from the principle that those who are not parties to a contract have neither rights nor obligations stemming from it can be, and has been, achieved by statute on occasion – I can think of one – but that occasion has been rare and the legislative intent has been spelt out in clear terms. I find nothing in s. 9(18) or in its context in the statute that either demands or would justify such an interpretation.58

In the end Reid J. dismissed the condominium corporation's claim in total because he found that any implied construction warranty had been nullified in the exculpatory clause present in the contract with the purchasers, and even if the exculpatory clause could not be ignored and warranties existed, they had not been breached.

To confuse matters further, two months after the York Condominium Corporation No. 76 v. Rose Park Wellesley Investments Ltd. decision came another Ontario High Court
decision on the same point. In Carleton Condominium Corporation No. 11 v. Shenkman Corporation Ltd. the condominium corporation was suing the developer for deficiencies in the common elements alleging express and implied warranties. Krever J. pointed out that unit owners fell into four categories:

"...those who had purchased their units before the completion of the construction, those who had purchased after the completion of the construction, those who had purchased their units on a resale to them by original unit owners and, finally, those who, in 1975, that is after the commencement of the action, had been first purchasers, not, however, of new units but of units that had been rented to tenants."  

He said, though, that it would be unnecessary to break the various categories down because although the right of the condominium corporation in respect of the common elements, at least on the grounds of breach of contract, must be founded on the right of one or more owners, once the condominium corporation establishes a right it can recover the total damages suffered as if all the present owners had a right to sue for breach of contract.

Krever J. chose the reasoning of Gray J. in Loader v. Rose Park Wellesley over that of Reid J. in York Condominium Corporation No. 76 v. Rose Park Wellesley.

"Because I can find no fault with Reid J.'s logic I am forced to agree with this conclusion that without a contract it is difficult to have contractual rights with the result that, in an action brought in contract and in which the condominium corporation, the proper plaintiff in an action in respect of the common elements, is not itself a contracting party, one or more of the unit owners must be shown to be a party to the contract, express or implied. But despite the great respect
I have for Mr. Justice Reid's reasons, I cannot go all the way with him to the conclusion that, owing to a derivative nature of the condominium corporation's right to sue, the damages which it may recover bear the same proportion to the assessed damages as the number of unit owners who were contracting parties bear to the total number of unit owners at the time of the commencement of the action. To this extent, and for the purpose of the measure of damages, I have sympathy for the approach adopted by Mr. Justice Gray in Loader v. Rose Park Wellesley Invts. Ltd., supra.

The Condominium Act was, without question, remedial legislation. It made possible and facilitated the marketability of a type of property ownership which, it is safe to say, required a departure from the common law. As remedial legislation one is obliged to give it such a large and liberal interpretation as will best attain the object of the Act according to its true intent, meaning and spirit. See s. 10 of the Interpretation Act. In my view that object will not be attained if one restricts damages to which the corporation is entitled to an amount which makes impossible the repair of the defective common elements. It is of little encouragement to the development of the condominium concept to so interpret the legislation that, in a case where only half the unit owners at the time of the commencement of that action were contracting parties and in which the roof has collapsed, the condominium corporation is awarded only half the expense of constructing a new roof. For the purpose, then, of damages, and given the existence of at least one unit owner who was a contracting party through whom the condominium corporation can base a claim, the following exposition by Mr. Justice Gray in the Loader case has, in my opinion, much merit.61

(He proceeds to quote remarks of Gray J. from p. 389 (O.R.) and p. 114 (A.L.R.) of the Loader v. Rose Park Wellesley case.)

He held that the developer was liable in respect of the common elements on the basis of breach of an implied warranty that they would be fit for habitation and completed in a workmanlike manner. The plaintiff obtained judgment in the amount of $359,797.89. The case is apparently currently under appeal.

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There seems to be no authority for saying that the condominium statutes have conferred on the condominium corporation the right to sue the developer for deficiencies in the common elements based on the contract between developers and original purchasers; in other words the statutes do not, in effect, make the condominium corporation party to or beneficiary under those contracts. It is submitted that 1980 amendments to the Ontario Condominium Act would change nothing in this respect - the wording of s. 14(1) is very similar to s. 15(1) and s. 15(7) of the B. C. Condominium Act, and the effect of the latter provisions was considered in Owners, Strata Plan No. VR 368 v. Marathon Realty Limited et al. In terms of numbers the decisions of the Ontario High Court seem to favour, slightly, the position that although the condominium corporation has no substantive claim based on contract between developer and purchaser, as long as one owner and member of the condominium corporation has a valid claim in contract that claim can be asserted successfully by the condominium corporation on behalf of all its members. If this view is correct, then in B. C. and Ontario, where the condominium corporation can now sue also in respect of the individual units as long as one member has a valid contractual claim against the developer in respect of the unit, should not the condominium corporation be able to assert that claim in respect of all the units with similar deficiencies? It is submitted that the reasoning of Gray J. in the Loader v. Rose Park Wellesley case and Krever J. in the Carleton Condominium v. Shenkman Corp. case has

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more to do with the nature of the common elements themselves and the practicalities of repairing them than it does with logic or the nature of the right given to the condominium corporation in the statute, and that in law it is the view of the B. C. Court of Appeal in Owners, Strata Plan No. VR 368 v. Marathon Realty Limited et al. and Reid J. in York Condominium Corporation No. 76 v. Rose Park Wellesley which is correct and should be preferred.

On the other hand, the strongest support for the view that the condominium corporation has a right of action on behalf of all owners in respect of the common elements where one owner has a contractual claim against the developer is the fact that the pre-1980 Ontario Condominium Act, in common with the present condominium statutes of New Brunswick, Nova Scotia and Prince Edward Island, said that:

"s. 9(18) Any action with respect to the common elements may be brought by the corporation and a judgment for the payment of money in favour of the corporation in such an action is an asset of the corporation."65

Presumably the reason that the judgment would be allocated to the condominium corporation would be to allow it to construct the common elements properly. If the condominium corporation could bring its action as it arose out of contractual claims of individual owners the amount recovered would likely be less than the amount required to effect repairs. So why would the judgment become an asset of the corporation if it it related only to the contractual rights of some owners? While it could be argued that the necessary inference from the sections relating to allocation of the judgment is that
full compensation for the common elements was intended, it is
doubtful that s. 9(18) is specific enough to confer a legal
right where none existed previously. An indication that the
distribution provision may have been misconceived is
Ontario's post-1980 s. 14(4) which now says:

"(4) Any judgment for payment in favour of the
corporation in an action brought on its own behalf
is an asset of the corporation.66"

In summary, then, according to the condominium statutes
only in Ontario and B. C. may the condominium corporation
bring an action relating to the individual units. It seems
settled that no class action in respect of the individual
units or common elements is possible, and that in order for
the condominium corporation to sue on behalf of anyone it
must be granted that right by statute. It can be argued that
because the condominium statutes of Alberta and Saskatchewan
only give the condominium corporation the right to sue "for
and in respect of damage or injury to the common property
caused by any person, whether owner or not", it would have no
right to sue the developer on behalf of an owner in respect
of a contractual claim or negligence relating to the common
property.

Whether the right of the condominium corporation to sue
replaces or supplements that of the owner is not clear,
although it is submitted that the view that it is a
supplemental right is preferable; otherwise the right of an
owner to sue could be effectively expropriated were he unable
to persuade the condominium corporation to act on his behalf.
Had the intention of the legislators been that the condominium statute would deprive owners of their common law rights, surely that intention would have been expressed more clearly. In B. C. it could be argued that because a special resolution must be obtained before the condominium corporation may sue in respect of the units, that at least in respect of the units the condominium corporation's right is supplemental. While it might be just to allow the condominium corporation to recover against the developer for deficiencies in the common elements even though the condominium corporation has no right in contract with him, it is submitted that the existing condominium statutes, even those which distribute proceeds of judgments to the condominium corporation, are not sufficiently specific to confer legal rights.

In respect of the warranty available to a purchaser under the Ontario New Home Warranties Plan Act [68] it appears that the condominium corporation is the only party to bring an action relating to the common elements. Under s. 15

"15. For the purposes of sections 13 and 14 a condominium corporation shall be deemed to be the owner of the common elements of the condominium and the warranties take effect on the date of the registration of the declaration and description."

Section 13(6) provides

(6) The warranties set out in subsection (1) apply notwithstanding any agreement or waiver to the contrary and are in addition to any other rights the owner may have and to any other warranty agreed upon."
It appears, then, that under the Ontario New Home Warranties Act the condominium corporation does have a substantive cause of action in its own right under the warranty plan.

An additional type of action which is available to an owner under the B. C. Condominium Act is under s. 42 or s. 72 on the grounds of oppression. Section 42 allows an owner to bring the suit where actions of the strata corporation or council are oppressive or unfairly prejudicial to "one or more owners, including himself." It appears that in this instance the statute is expressly recognizing the power of an owner to bring a class action. Section 42 allows the Court to

"make the interim or final order it considers appropriate and without limiting the generality of that power, may

a) direct or prohibit an act of council or vary a transaction or resolution; and

b) regulate the conduct of the corporation's future affairs."

It is doubtful that the Court would be willing to make any monetary award acting under s. 42, both because the nature of the complaint would probably render it inappropriate and because the type of complaint would not have justified damages at common law on company law principles. The only remedy under s. 72 is an injunction which must be applied for by a "majority of owners affected." In provinces other than B. C. where the condominium statutes contain no oppression section, the Courts might be willing to import from company law the duty of those with the majority of voting power not to oppress the minority or commit a fraud on them, but
damages would not be the appropriate remedy. Rather, as in company law, the Courts would be more inclined to grant an injunction, declaration or regulating order.

The Canadian cases relating to a condominium developer's fiduciary duty are interesting when considered in relation to the cases on the condominium corporation's standing to sue. In both Owners: Condominium Plan Number 753-1207 v. Terrace (Construction) Ltd: Zeiter et al. and York Condominium Corporation No. 167 et al. v. Newry Holdings Ltd. et. al. the condominium corporations were plaintiffs alleging what was essentially breach of fiduciary duty on the part of the condominium developer. The standing of the condominium corporation to sue does not appear to have been questioned in either case, in spite of the fact that the fiduciary duty was found to exist as the result of interim agreements which had been executed prior to the actions in question. According to Henry J. in York Condominium Corporation No. 148 v. Singular Investments Ltd., whose reasoning and conclusions were not questioned in the subsequent cases, the condominium corporation has no right to sue on behalf of any owner unless expressly given that power by statute. One would have to assume, then, that the condominium corporation was permitted to sue because the cause of action belonged to it. This conclusion is supported by the results of the cases, in which damages were awarded to the strata corporation. This appears to lend further support for the proposition that the developer owes a fiduciary duty to the strata corporation.
C. Arbitration

The only province which has an alternative to the court system as a forum for condominium disputes is British Columbia. Under s. 44(1) of the B. C. Condominium Act "44 (1) the strata corporation or an owner may, prior to the commencement of a court proceeding about a dispute, refer to arbitration the dispute between the strata corporation and an owner or between 2 or more owners about any matter, including, without limiting that statement, a dispute about:
(a) contributions to common expenses or money paid under section 34(2);
(b) fines for the breach of the bylaws or rules and regulations;
(c) damages to common property, common facilities and other assets of the strata corporation; and
(d) decisions of the strata council or the strata corporation where the strata corporation consists of 2 strata lots.

It appears then, that arbitration proceedings can be invoked not only with the agreement of the parties to the dispute but unilaterally by either the strata corporation or an owner before the commencement of a court proceeding, which presumably would be interpreted to mean before issuance of a writ of summons. A party wanting to avoid costs, delays and trauma involved in litigation would be well advised to proceed as quickly as possible to arbitration after the dispute arises. At what stage does a "disagreement" become a "dispute"? Difficulty in determining at what stage a matter should be referred to arbitration, possibly coupled with ignorance about the availability of arbitration as a possibility, may be one of the reasons the procedure has not been widely used. Under s. 44(4)
"Unless the parties otherwise agree, each arbitrator shall be an owner and occupier of a strata lot in another strata development for at least one year, but may not be a member of the strata corporation affected by the arbitration."

and under s. 45(4) the arbitrators have broad powers to make an award, and order payment of costs and remuneration for the arbitrators.

It is to be noted that arbitration is only available amongst owners or between the strata corporation and an owner and not in a dispute involving the developer unless, of course, the developer happened also to be an owner. Presumably the scope of arbitration involving an owner developer would be claims which involve him as owner, and not, for instance, claims for deficiencies. It would probably not be productive to expand the scope of arbitration to encompass disputes with the developer, at least as they relate to deficiencies. These actions will often involve large sums of money and even if an arbitration proceeding could properly try the matters in issue, an unsuccessful developer would probably be inclined to appeal, which might just have the opposite of the desired effect by magnifying costs and drawing the dispute out.
D. Government Involvement

Contained in the Ontario Condominium Act are provisions which would establish a non-profit condominium bureau to educate the public in condominium matters, educate property managers and establish a dispute-reduction procedure. Where there is a dispute between the corporation and an owner or amongst owners the bureau would appoint a review officer who could order the parties to do anything or refrain from doing anything. Any order made by the review officer could be appealed to the Commercial Registration Appeal Tribunal. The bureau was to be funded by an annual fee assessed on each unit and paid by the condominium corporation. Disputes over funding stalled the scheme, and s. 56-58 have never been proclaimed.

No such scheme has been proposed for British Columbia. At one point there was a Condominium Officer as part of the provincial Ministry of Consumer and Corporate Affairs charged with the responsibility of educating the public as to condominiums and exercising a mediation role in condominium disputes, but this position was abandoned in 1984. While government now seems unwilling to fill a paternalistic role what is perhaps required is the level of involvement that government has in residential tenancy disputes in British Columbia.

The B. C. Residential Tenancy Act provides for arbitration of certain types of disputes under the Act. It is open to the parties to designate an arbitrator but if no arbitrator is designated the registrar of the Residential
Tenancy Branch will designate one. His offices are available as a location for arbitrations and the fee of $30 for filing documents covers the cost of arbitration. The arbitrator has liberal powers to accept evidence and summon witnesses, and under s. 44(4) a decision of the arbitrator is binding. In addition to administering arbitrations the Residential Tenancy Branch provides information related to residential landlord-tenant matters to the public.

A similar system might work well with condominiums, providing a cheaper, more flexible and less combative forum for disputes than is available through the courts. It is submitted that the need for such a system is at least as great for condominium owners as for tenants. Arguably the B.C. condominium owner has fewer rights and therefore less power vis a vis the strata corporation than does the B.C. residential tenant, and it is much harder for the condominium owner than for the tenant to simply change abodes if he is faced with an untenable living situation. How this innovation would be funded is naturally a stumbling block, but one must consider overall savings in terms of Court time, and perhaps a Condominium Branch could be administered out of the same office as the Residential Tenancy Branch.
E. Conclusions

The present state of the law applying to recovery of construction deficiencies is not adequate. Common law has imported implied warranties into purchase of an incomplete house, no matter how "substantially" complete that house is, which would not apply were the identical house purchased in a complete state. This seems particularly ridiculous in the case of condominiums, where purchasers in a common development may have bought identical units with identical defects - some of those purchasers are protected by law and some are not. In Fraser-Reid v. Droumstekas et al., Dickson J. signalled clearly that any rationalization of the law in this regard would have to be brought about through legislative rather than judicial intervention. The compulsory new home warranty of the Ontario New Home Warranty Plan Act seems to be the solution which best promotes the interests of the purchaser. Whether costs exceed benefits will remain to be seen.

Should the condominium corporation have the right on its own behalf to sue the developer or should its right of action merely be representative of the rights of the owner? The argument for granting the condominium corporation a substantive right to sue is that only that way can sufficient compensation be obtained to repair the common elements, which is the object of the exercise. If the condominium corporation must found its case on the rights of owners, its claim may be diminished in proportion to those owners who have no contract with the developer and those owners who bought in a
completed state, so the amount necessary to repair the common elements may not be recovered. The solution of Krever J. in Carleton Condominium Corporation No. 11 v. Shenkman Corporation Ltd. that the condominium corporation founds its right to collect damages for the common elements on the right of any owner having the right to do so, then can collect full damages, may appear attractive superficially. The flaw in the scheme, however, (other than logic) is that if the condominium corporation could find even one original purchaser who bought in an incomplete state they could perhaps recover millions, but if no such original purchaser remained they would recover nothing.

The problem with granting the condominium corporation a substantive right to sue is that, in practical terms, the corporation's right would really have to replace the owner's right. If one owner brought action and recovered damages for deficiencies in his proportion of the common elements, then the condominium corporation sued for basically the same thing, any recovery by the condominium corporation would have to be reduced by the amount of damages already paid to the individual owner, or the developer would be paying twice. The condominium corporation would not recover the amount to effect the repairs. While that problem might be attacked by giving the condominium corporation the right to collect damages already paid to an owner from him, that could also be unfair or impractical. This might be a possible solution where the owner who recovered his award still owns his unit,
but where title has passed to another owner, it would not be feasible.

The only way to permit the condominium corporation recovery which would allow it to repair the common elements is to grant it a substantive cause of action which replaces the owner's right. The only problem here is that if the owner no longer can bring action in respect of the common elements of which he is part owner, and he is unable to prod the condominium corporation into bringing action, his rights may effectively have been expropriated. This would seem to be the drawback to a scheme such as the Ontario New Home Warranties Act which deems the condominium corporation to be owner of the common elements for the purpose of the warranty. While the scheme is to be lauded in imposing a statutory warranty applying to new homes, complete or incomplete, it would deny the unit owner the right to bring action relating to the common elements. Where the developer retains influence over the condominium corporation for a longer time, the protection of the statutory warranty may effectively be negated.

If a uniform warranty were applied to purchase of new homes, complete or incomplete, what is the objection to a scheme which allows an individual to bring action on behalf of himself, or on behalf of all owners to recover under the warranty on the common property? If judgment were obtained it would be distributed to each owner and used to offset the increase in maintenance fees or diminished enjoyment resulting from the deficiencies. One objection would be that
the judgment should only be distributed to the original owners who are properly the beneficiaries of the warranty, otherwise present owners might receive a windfall. Another objection is that one owner should not be permitted to settle the rights of all - but all owners could be entitled to be served with notice of the action and to separate representation in it should they so desire. On the other hand, in a development comprising hundreds of units, chaos rather than justice might be the result.

If there were a statutory warranty another solution might be to give the owner the right to bring an action in the name of the condominium corporation in respect of the common elements, after having given the condominium corporation the opportunity to do so itself. The warranty and the right of action would belong to the condominium corporation, but the owner could utilize the corporation's rights. This would be, in effect, to import the derivative action possible in the context of company law into the sphere of condominiums. The problem addressed is the same in both contexts - that is the problem of prodding the corporation into bringing action. Any award would belong to the condominium corporation (minus the plaintiff's costs), and could provide the full amount necessary to repair the common elements. The derivative action should also be available to an owner alleging breach of fiduciary duty owed to the condominium corporation.
Bruce J. Lorenz argues in his annotation which prefaces the report of the York Condominium Corporation No. 148 v. 79 Singular case that the condominium corporation must be allowed to recover in respect of the individual units because of the problem, frequently, of determining the boundary between the unit and the common property and allocating damages to each. It is submitted that this problem will be inherent in any scheme which does not deprive the owner of his property rights. While it may make practical sense to permit the condominium corporation to join a claim for deficiencies in the units on behalf of the owners with a claim in respect of the common elements, that right should be exercised only with the consent of the owner, who may wish to pursue his own claim, and can only supplement his right, not replace it based on the reasoning suggested above. A judgment recovered in respect of a unit should be paid to the person who owned the unit at the time the claim was brought.

In order to widen the use of arbitration in condominium disputes government could formalize procedures as it has done in residential tenancy disputes. Cost considerations might mitigate against government involvement in condominium disputes, but costs could at least partially be offset by user fees, and one must also consider savings in terms of less use of the courts if an alternative were readily available.
VI CONCLUSIONS

The condominium statues in all the Canadian provinces considered in this paper do to some extent go beyond simple enabling legislation and do, to some extent, recognize the special problems arising out of relations amongst owners, developers and condominium corporations. The condominium statues of Ontario, Prince Edward Island, British Columbia and Alberta are the ones which bear the stamp of second-generation legislation to the greatest degree in recognizing the particular vulnerability of the condominium purchaser to the developer. The ways in which these potentially troublesome relationships are addressed, however, are perhaps in some cases not as effective as they could be.

If disclosure is to be the main thrust of purchaser protection, as it probably should be, the disclosure should be complete and timely in the sense that the purchaser has a realistic opportunity to opt-out of the transaction if he is unhappy with the content of the disclosure. The provisions for disclosure contained in the Ontario Condominium Act are the most complete, but could be improved if what the condominium corporation is required to divulge in a Form 18 under s.32(8) of the Act were presented to the purchaser before he committed himself to purchase. Under present requirements Form 18 information such as "circumstances that may result in an increase in the common expenses for the unit," whether the corporation is presently party to a legal action, or whether a substantial addition is being
considered, might be interesting but not useful in the sense that a purchaser could make an informed decision based on it because usually his decision will already have been made. The developer could be required to request and produce a Form 18 as part of his disclosure package.

Remedies for inaccurate disclosure and non-disclosure should be clarified. Damages seem the appropriate remedy for inaccurate disclosure, but what is the situation in the case of non disclosure? Do the purchaser's rights end on execution of the contract? This produces little incentive to comply and should not be the case unless the legislators are confident that making non-disclosure an offence under the Statute will induce developers to comply.

Government should involve itself in the disclosure process to the extent of investigating and reviewing the initial disclosure documentation if there is evidence that the public interest is at stake, or if consumers are, because of the complexity of the subject-matter, unable to protect their own interests. It is submitted that in the field of condominiums if there is legislation which ensures adequate and timely disclosure, government review is not required except perhaps to ensure fairness in allocation of the common property and in allocation of proceeds on destruction (and of course to ensure that what is submitted for registration conforms to statutory requirements). In provinces which permit phased developments, government should
intervene to ensure proper bonding, because the danger of non-completion in the phased project is not something the average purchaser could be expected to appreciate (or protect himself against).

Disclosure will not solve the potential for undue developer control in the initial stages of the condominium development. This is an issue that is addressed to some extent in the condominium statutes of Ontario, Prince Edward Island, Alberta and British Columbia, for instance by mandating the election of a new board when the developer ceases to have a majority of votes in the condominium corporation, allowing for cancellation of management contracts by special resolution, or by majority vote if the contract was entered into when the developer had majority control. The assumption which underlies this type of protection is that once the developer ceases to own a majority of units he ceases to have effective control - but this assumption is frequently incorrect in that the developer may control votes as mortgagee, or may be able to determine the outcome of decisions with less than a majority of votes. Instead of granting the condominium corporation rights a better way to protect the purchaser might be to codify duties owned by the developer. The courts seem to have gone some distance in transferring the fiduciary duty of a promoter in company law to the developer of a condominium corporation, and it would be to the benefit of condominium purchasers to confirm that extension in statutory form.
Disclosure is only useful if it gives the purchaser an accurate picture of what he is buying and this will not be the case if the groundrules or fundamental aspects of the project can change significantly during his ownership. Balanced with protecting the owner's expectations should of course be the good of the condominium community and this may necessitate some regulation of what the owner can do. On the other hand it seems only fair that basic property rights, such as the right to lease, should be available to the owner unless he was made aware before he committed himself to purchase that restrictions existed. The best way to do this is to have some basic groundrules which must be provided to the purchaser as part of disclosure which are alterable only with unanimous consent, or possibly on Court order. The jurisdictions where condominium statues have a declaration as the founding document of the condominium project have to some degree adopted this approach. There should be the possibility of bylaws which can be altered, but in order to protect the purchaser's expectations the bylaws should not conflict with the groundrules, and there should be limitations on what the bylaws can do, or at least the proviso that they be reasonable.

It would not be fair, because he happens to have bought a condominium instead of a house in a conventional subdivision, to deprive a purchaser of a cause of action arising out of deficiencies in the subject-matter of his purchase. Because of the problems of standing to sue which emerge from the
peculiar nature of condominium ownership and which have been explored in depth particularly in Ontario cases, the best solution would seem to be to allow the owner to sue in respect of his own unit and allow him to cede that right to the condominium corporation should he so choose, but to allow the condominium corporation to sue for deficiencies in the common elements, even though the individual owners own them. To overcome the difficulty which might be experienced in prompting the condominium corporation to sue, the owner would be able to enforce the condominium corporation's right by way of a derivative action. This, of course, still leaves open the question of what the condominium corporation's rights would actually be based on. It would clear up inconsistencies and deficiencies at common law to legislate a standard new home warranty and make the condominium corporation beneficiary of the warranty as it applies to the common elements in a condominium project, as has been done under the Ontario New Home Warranties Plan. In respect of breach of fiduciary duty, in most cases it would be the condominium corporation which would be beneficiary of the duty, but the right would be much stronger were the owner able to bring a derivative action in respect of it.

In summary, then, disclosure is the main, but not the complete answer to protecting purchaser expectations in the condominium context. Because of the special nature of the ongoing relationships amongst participants, legislation must be directed to specific problems arising out of those
relationships. Of course it must be recognized that given complete and timely disclosure and legislation directed towards certain problems the position of the condominium purchaser and the functioning of the condominium development may still not be ideal. Not all problems can be solved, and legislation is certainly not the solution to all problems. Aggravation will always be present when people interact in a community — disinterest of self-interest at one extreme and overinvolvement and zealous overregulation at the other. Special difficulties will be present in very huge projects and those have not been specifically addressed in this paper. While it would be unfair and unrealistic to lay the responsibility for difficulties in condominium projects exclusively at the feet of the developer or the condominium corporation, the cases do seem to demonstrate instances where these relationships have been a major factor in defeating purchaser expectations in the condominium purchase, and it is the conclusion of this paper that there are legislative steps which might help to alleviate these sources of purchaser difficulty.

2. Ibid., p. 434.

3. Ibid., p. 733.


6. Ibid., per Sir Eric Sacks at p. 345.

7. Ibid., at p. 339.


10. Flight v. Booth (1834) 1 Bing (N.C.) 370 (C.C.P.)

11. Ibid., at p. 376.

12. Ibid., at p. 376-377.


Alberta has the Unfair Trade Practices Act, R.S.A., C. V-3.

Ontario has the Business Practices Act, R.S.O. 1980, C. 55.


15. Combines Investigation Act, R.S. C-23.

16. Real Estate Act, R.S.B.C. 1979, Ch. 356.

17. Ibid., s. 50(5), (6), (7).
(5) No developer, and no person on behalf of a developer, shall sell, or lease, or offer for sale or lease, strata lots or cooperative units created or intended to be created by converting existing buildings into strata lots or cooperative units, as the case may be, unless

(a) approval of the conversion to strata lots or cooperative units is first obtained,

(i) where a building is situated in a municipality, from the municipal council; or

(ii) where a building is not situated in a municipality, from the regional board of the regional district, in which the building is situated;

(b) the provisions of the Residential Tenancy Act respecting the conversion of residential premises to strata lots or cooperative units are complied with; and

(c) subsection (6) has been complied with.

(6) No developer, and no person on behalf of a developer, shall sell, or lease, or offer for sale or lease, or knowingly assist in the sale or lease or offering for sale or lease of, subdivided land or a time share interest, unless a prospectus in the form and including the particulars required under section 51 is submitted to, and accepted and filed by, the superintendent.

(7) No developer, and no person on behalf of a developer shall sell, or lease, or enter into any contract for the sale or lease of subdivided land or a time share interest, unless

(a) a true copy of the prospectus referred to in subsection (6) has been delivered to the prospective purchaser or lessee; and

(b) the prospective purchaser or lessee has been afforded the opportunity to read the prospectus and a receipt has been taken from the prospective purchaser or lessee acknowledging that he has been afforded that opportunity, and every receipt shall be retained on file by the person taking the same and be available for inspection by the superintendent for a period of 3 years after the date it was taken.

18. Ibid., s. 1.

"subdivision" or "subdivided land" means land, whether the land is situated inside or outside the Province, that is, for the purpose of sale or lease, divided or proposed to be divided, whether by one or more divisions, into

(a) 5 or more lots or parcels,

(b) 5 or more strata lots, or

(c) 2 or more cooperative units by means of the creation, conversion, organization or development of a cooperative corporation,

but does not include

(d) land divided or proposed to be divided into lots or parcels of not less than 64.7 ha, or

(e) space leased in a commercial, industrial or apartment building unless the building is owned wholly or partly by a strata corporation or a cooperative corporation;

19. Ibid., Regulation 41/82.

Interpretation

1. In this regulation "Act" means the Real Estate Act

2. Repealed. [B.C. Reg. 403/85, s. 1.]
Sale or lease exclusively to shareholders of a reporting company

3. A reporting company, as defined in the *Company Act*, or a person on its behalf, that sells or leases or offers to sell or lease subdivided land only to the company's shareholders is exempt from complying with Part 2 of the Act in respect of that offer for sale or lease and the sale or lease.

Sale or lease from developer to developer

4. A developer, or a person on behalf of a developer, who sells, leases, or offers for sale or lease or assists in the sale or lease of 5 or more lots, parcels or strata lots or 2 or more cooperative units in a subdivision situated in the Province in a single transaction is exempt from Part 2 of the Act in respect of the lots offered for sale or lease or sold or leased in the single transaction.

[T.C. Reg. 403/85, s. 3.]

Sale of land for industrial or commercial purposes

5. A developer, or a person on behalf of a developer, who sells, leases, offers for sale or lease or assists in the sale or lease of subdivided land in the Province that is

(a) zoned to allow use only for industrial, commercial or both industrial and commercial purposes, and

(b) used in a way that conforms with the zoning bylaw referred to in paragraph (a)

is exempt from complying with Part 2 of the Act in respect of that offer for sale or lease and the sale or lease.

Transitional

5.1 Where a person was exempt from Part 2 of the Act under section 4 or 5 of B.C. Reg. 41/82, as it was before July 1, 1984, in respect of an offer for sale or lease made before July 1, 1984, that person and any other person who, in order to complete the transaction commenced by the offer made before July 1, 1984, sells or leases that land or assists in the sale or lease of that land is exempt from Part 2 of the Act in respect of that land.

[T.C. Reg. 208/84, s. 1.1]
Leases not exceeding 3 years

6. (1) A lessor or an offeror or a person on behalf of the lessor or offeror who leases or offers to lease subdivided land by way of a lease or agreement for lease for a term not exceeding 3 years is exempt from complying with Part 2 of the Act in respect of that offer for lease or lease.

(2) For the purposes of this section, the term of a lease shall include any period by which the lease may be extended under any option or covenant for renewal.

[am. B.C. Reg. 403/85, s. 5.]

Sale or lease subject to Securities Act

7. Where, in respect of a sale or lease of subdivided land in the Province,
   (a) section 36 of the Securities Act applies to require the filing of a prospectus with the Superintendent of Brokers,
   (b) the Superintendent of Brokers makes a determination under section 55 of the Securities Act,
   (c) the Superintendent of Brokers makes an order under section 21 of the Securities Act,
   (d) a regulation made under section 54 (2) (d) of the Securities Act applies, and on or after the coming into force of this section the seller, lessor or offeror, as the case may be, complies with the relevant provisions of the Securities Act, and with that or any determination or order made by the Superintendent of Brokers under the Securities Act, to the satisfaction of the Superintendent of Brokers, then the seller, lessor or offeror and persons assisting in the sale, lease or offering are exempt from the provisions of Part 2 of the Act in respect of the sale, lease or offering.

[am. B.C. Reg. 101/86.]

Time share interests

8. A person who
   (a) sells or leases or offers for sale or lease, or
   (b) assists in the sale or lease or offering for sale or lease of

   more than 4 times share interests in one time share use plan is exempt from complying with the provisions of Part 2 of the Act in respect of a sale or lease of the time share interest occurring on or before September 30, 1982.

[am. B.C. Reg. 269/82.]

Sale of subdivided land in municipalities

9. (1) In this section "municipality" means the corporation into which the residents of an area in the Province have been incorporated as a municipality under any Act but does not include an improvement district or regional district.
(2) A developer, or a person on behalf of a developer, who sells, leases, offers
for sale or lease or assists in the sale or lease of a subdivision in the Province that
(a) is owned by the developer or has a right to purchase in the developer's
name registered against it, and
(b) is in a municipality,
is exempt from Part 2 of the Act in respect of that offer for sale or lease and the
sale or lease on the condition that
(c) Repealed. [B.C. Reg. 403/85]
(d) an owner of the land has, before the offer for sale or lease, complied
with section 729 (9) of the Municipal Act.

(3) Subsection (2) does not apply to a strata lot or a cooperative unit.

20. Ibid., s. 51(1).

51. (1) Every prospectus to which section 50 relates shall be a statement in
writing dated and signed by every person who is at the time of the filing of the prospectus
a developer or a director of a corporate developer of the subdivided land or time share
interest referred to in it and by any other person required by the superintendent, and the
prospectus shall contain a full, true and plain disclosure relating to the real estate, time
share interests, strata lots or cooperative units proposed to be sold or leased, including
particulars prescribed by the superintendent for each category.

21. Ibid., s. 54–58 incl.

Investigation by superintendent

54. The superintendent may, before accepting the prospectus for filing, cause to be
made any investigation of the subdivision or time share interest he sees fit. The
reasonable and proper costs of the investigation shall be borne by the developer.


Investigation by council

55. (1) The council, on the request of the superintendent, shall make the inves­
tigation referred to in section 54 through any of its members or officers or through any
person authorized by the council, its chairman or its secretary.

(2) The reasonable and proper expenses incurred by the council, including reason­
able and proper charges for the time of council employees in connection with the
investigation, together with whatever fee may be fixed by regulation, shall be paid to the
council by the developer.

Changes affecting prospectus

56. If a change occurs with regard to any of the matters set out in any prospectus
(a) that would have the effect of rendering a statement in the prospectus false
or misleading; or
(b) that brings into being a fact or proposal which should have been disclosed
in the prospectus if the fact or proposal had existed at the time of the filing,
the developer shall immediately notify the superintendent in writing and shall file an
amendment to the prospectus or a new prospectus as the superintendent may direct.
Sections 50, 53, 54 and 55 apply to the amendment or new prospectus.
The following section is added:

Disclosure statement instead of prospectus

50.1 (1) Notwithstanding section 50, the superintendent may permit a person to submit a disclosure statement to him instead of a prospectus referred to in that section, and, on submission of the duly completed statement, the superintendent shall, notwithstanding section 57 (1), accept it for filing.

(2) A disclosure statement permitted under this section shall be deemed to be a prospectus for the purposes of this Part, but sections 51, 54 and 55 do not apply to the disclosure statement or to an amendment to it.

(3) A disclosure statement permitted under this section shall
(a) notwithstanding section 44 (j), be in the form and include the contents required by the superintendent,
(b) be dated and signed by every person who is, at the time of the filing of the statement, a developer or a director of a corporate developer of the subdivided land or time share interest referred to in it and by any other person required by the superintendent,
(c) contain full, true and plain disclosure of the matters in the required contents referred to in paragraph (a), and
(d) have printed or stamped in conspicuous type on its outside front cover the following words:
"Neither the Superintendent of Insurance nor any other authority of the government of the Province of British Columbia has in any way passed on the merits of the matters dealt with in this disclosure statement. This disclosure statement has been filed with the Superintendent of Real Estate Act, Policy Statement 9, Part 2.


REAL ESTATE ACT

POLICY STATEMENT 9

PART 2 - PROSPECTUS AND DISCLOSURE STATEMENT REQUIREMENTS

"USE OF DISCLOSURE STATEMENTS"

1. This policy, issued on an interim basis, is effective immediately. An earlier version of this policy was undated and labelled Policy Statement #8 rather than #9. Some minor changes have been made to correct errors. The previous policy statement is hereby rescinded. Comments regarding this policy statement are invited and may be submitted to the Superintendent of Brokers Office, 1100 - 865 Hornby Street, Vancouver, B.C. V6Z 2H4 no later than February 1, 1986.
2. Disclosure Statement Filing

Recent amendments to the Real Estate Act have authorized the Superintendent to permit a person to submit a Disclosure Statement instead of a prospectus. The Disclosure Statements will not be reviewed by the Superintendent's staff, but when duly completed will be accepted for filing notwithstanding section 57(1) and will be available for public inspection. Developers may begin selling as soon as the duly completed Disclosure Statement has been filed at this office. Developers are cautioned however, that they must still comply with the provisions of Part 2 before selling. The onus is entirely on the developer to ensure that the Disclosure Statement has been filed at the Superintendent's office. No letter or receipt, etc., will be issued at the time of filing but a standard form letter of receipt will be sent at a later time to the developer by the Superintendent's office; however, the developer need not wait to sell before receiving it.

3. Where Disclosure Statement Permitted

The Superintendent will permit most developers to submit a Disclosure Statement instead of a prospectus under section 50.1 unless

(a) the subdivided land is outside the Province,

(b) the offering pertains to time share interests, or

(c) the Superintendent considers it to be in the public interest to require a prospectus to be filed.

The Superintendent will address the issue raised in paragraph (c) where, on an office review or after a complaint, he has determined that a particular developer is failing to meet the disclosure requirements of the Real Estate Act.

4. Amendments to Existing Prospectuses

Where an amendment is required to a filed prospectus, the amendment shall be prepared in the form of an amendment to the prospectuses. The new Disclosure Statement provisions do not modify any requirements of the Real Estate respecting prospectuses already filed.

5. The Completion of the Disclosure Statement

Annexed to this policy statement are the contents required to be included in the Disclosure Statement. All substantive provisions of the Real Estate Act relating to a prospectus, such as the fees, solicitor's certificate, the developer's affidavit, exhibits and receipt under section 50(7)(b) are still required with the filing of the Disclosure Statement.
6. **Transition Period**

In many cases, a developer will have already filed a prospectus and is awaiting final approval from the Superintendent's office when this Disclosure Statement policy comes into effect. A developer may choose to continue with the current vetting of his prospectus or he may choose to withdraw his prospectus and replace it with a Disclosure Statement where so permitted. Attachments used in the prospectus filing may be used for the Disclosure Statement if appropriate.

7. **Enforcement**

These legislative and policy amendments provide substantial changes in filing procedures for the developers and the staff of this office. The obvious speed and efficiencies of the new system are not intended to result in any lessening of protection for purchasers or lessees. Staff of the Superintendent's office formerly employed in vetting prospectuses will now be employed in random review of filings of Disclosure Statements to ensure that they provide full, true and plain disclosure, and to ensure that particular developers are filing Disclosure Statements which meet the requirements of the Real Estate Act. Staff may, on occasion, make investigations and appear on site to compare the facts contained in the Disclosure Statement with the development itself. Where it is found that the Disclosure Statement is inaccurate, or otherwise fails to meet the requirements of the Real Estate Act recommendations may be made to the Superintendent to issue a cease selling order. Under section 58(1), a developer will be given an opportunity to be heard before a cease selling order is made unless the length of time required could be prejudicial to the public interest, in which case, a temporary order may be made.

Where a developer has contravened the Real Estate Act the Superintendent may also choose to recommend prosecution. Please note the increased penalties where prosecution results in a conviction.

DATED at Vancouver, B.C. this 20 day of December, 1985.

Rupert L. Bullock
Superintendent of Brokers,
Insurance and Real Estate

24. Ibid., Clause 3.

25. Condominium Act, R.S.O., 1980 Ch. 84.
26. See s. 52. Appendix G. Appendix G. 

27. Condominium Property Act, R.S.A. 1980, Ch. C-22. See Appendix A. 

28. Condominium Act, 1977, Ch. 6. See Appendix H. 

29. The Real Estate Brokers Amendment Act, 1980 (No. 2). s. 5(1). 

5. — (1) The heading immediately preceding section 46 and subsection 46(1) are repealed and the following substituted: 

"REAL ESTATE OUTSIDE SASKATCHEWAN 

“(1) No person shall trade in Saskatchewan in real estate located outside Saskatchewan until he: 

(a) files with the superintendent a prospectus with respect to the real estate and containing any information that the superintendent may require; and 

(b) obtains a certificate of acceptance from the superintendent". 

30. Real Estate Brokers Act, S.M. 1976, C.64, s. 51(1). 

Prospectus required for subdivision outside Manitoba. 

51 (1) Subject to section 61, no person shall, in any capacity, trade in any real estate which is or comprises, one or more lots or units in a subdivision outside Manitoba, unless 

(a) a prospectus relating thereto containing the information prescribed by the regulations has been filed with the registrar; and 

(b) a certificate of acceptance of the prospectus has been granted by the registrar and is still in force. 

31. Real Estate Trading (Amendment) Act, 1977, Ch. 26., s. 15. 

15. The said Act is amended by adding after section 45 the following: 

"REGULATION OF TRADING OF EXTRA-PROVINCIAL REAL ESTATE. 

45A (1) An agent or salesman who proposes to trade within this province in real estate, where the real estate is a lot or unit of land in a subdivision consisting of more than three lots located outside the province, shall file a prospectus, in the form prescribed by the regulations, with the Superintendent and shall not commence the sale of such real estate until the Superintendent has approved the prospectus."
(2) The Superintendent may make such inquiries relating to the prospectus as he deems necessary.

(3) An approval granted under subsection (1) is not a certification by the Superintendent of the prospectus, and he is not liable for damages in respect of such approval.

32. Real Estate Agents' Licensing Act, R.S.A. 1980, Ch. R-5.

Trading in Real Estate Outside Alberta

38(1) A person shall not, directly or indirectly, trade in real estate located outside of Alberta unless

(a) that trade takes place through an agent licensed under this Act, and

(b) that person has

   (i) repealed 1984 c36 s23,

   (ii) filed a prospectus with the Superintendent and been issued a certificate of acceptance under section 45 in respect of that prospectus.

(2) Subsection (1) does not apply in respect of an isolated trade in real estate when that trade is not part of continued successive transactions of a like nature.

(3) A person shall not make any representation, written or oral, that the Superintendent has passed on

(a) the financial standing, fitness or conduct of any person in connection with the filed prospectus, or

(b) the merits of the prospectus.

RSA 1980 cR-5 s38; 1984 c36  s23


40(1) A person shall not, either as a vendor or as an agent or salesman, enter into or negotiate any contract in respect of a trade in real estate located outside of Alberta unless

(a) a copy of the prospectus referred to in section 42 has been delivered to the prospective purchaser, tenant or licensee, as the case may be, and

(b) the prospective purchaser, tenant or licensee has in writing acknowledged receipt of a copy of the prospectus and that he has been afforded the opportunity to read it.

(2) Every acknowledgment referred to in subsection (1) shall be retained by the vendor or agent and be available for inspection by the Superintendent for a period of not less than 3 years.

(3) When a purchaser, tenant or licensee has entered into a contract to which subsection (1) applies, he may rescind the contract

(a) within 30 days of entering into the contract, or

(b) if subsection (1) has not been complied with.
(4) If subsection (1) has not been complied with, the contract is unenforceable by the vendor or his agent and any money paid under the contract shall be returned to the purchaser, tenant or licensee at the option of the purchaser, tenant or licensee.

(5) In an action for rescission under subsection (3)(b), the onus of proving compliance with subsection (1) rests on the vendor.

(6) The right of rescission provided in this section is in addition to any other right that the purchaser or tenant may have in respect of the contract.


38.—(1) No person shall, in any capacity, trade in real estate, where the real estate is a lot or unit of land in a subdivision located outside Ontario, until there has been filed with the Registrar a prospectus containing the prescribed information and until there has been obtained from the Registrar a certificate of acceptance thereof.

(2) No person shall make any representation, written or oral, that the Director or the Registrar has passed upon the financial standing, fitness or conduct of any person in connection with any such prospectus or upon the merits of any such prospectus. R.S.O. 1970, c. 401, s. 49.

39.—(1) No person shall, either as a vendor or as a broker or salesman, enter into or negotiate any contract for the sale or lease of a lot or a unit of land in a subdivision located outside Ontario unless,

(a) a copy of the prospectus referred to in section 38 or such shorter form of the prospectus as the Registrar may have approved for distribution to the public has been delivered to the prospective purchaser or tenant, as the case may be;

(b) the prospective purchaser or tenant has in writing acknowledged receipt of a copy of the prospectus or the shorter form of the prospectus and that he has been afforded the opportunity to read it;

(c) he is a registered broker or the contract is negotiated by a registered broker.

(2) Every acknowledgment referred to in subsection (1) shall be retained by the vendor or broker and be available for inspection by the Registrar for a period of not less than three years.
34. Appendix G.
35. Appendix H.
36. Appendix A.
37. Appendix A.
38. Appendix B.
39. Appendix B.
40 Appendix B.
41. Appendix G.
42. Appendix G.
43. Appendix H.
44. Appendix A, S. 9.
45. Supra., footnote 17.
46. Appendix G.
47. Appendix G.
49. Appendix H, S. 32.
50. Appendix A.
51. Appendix B.
52. Appendix B.
53. Appendix B.
54. Appendix B.

56. Appendix G.
58. Supra., footnote 43.
59. Appendix A.
60. Real Estate Act, R.S.B.C. 1979, Ch. 356, s. 59.
Effect of prospectus

59. (1) Where a prospectus has been accepted for filing by the superintendent under this Part,

(a) every purchaser of any part of the subdivided land or time share interest to which the prospectus relates shall be deemed to have relied on the representations made in the prospectus whether the purchaser has received the prospectus or not; and

(b) if any material false statement is contained in the prospectus,
   (i) every person who is a director of the developer at the time of the issue of the prospectus;
   (ii) every person who, having authorized such naming of him, is named in the prospectus as a director of the developer;
   (iii) every developer; and
   (iv) every person who has authorized the issue of the prospectus is liable to make compensation to all persons who have purchased the subdivided land or time share interest for any loss or damage those persons may have sustained, unless it is proved
   (v) that, having consented to become a director of the developer, he withdrew his consent before the issue of the prospectus, and that the prospectus was issued without his authority or consent;
   (vi) that the prospectus was issued without his knowledge or consent, and that, on becoming aware of its issue, he immediately gave reasonable public notice that it was so issued;
   (vii) that, after the issue of the prospectus and before a sale of the subdivided land or time share interest, he, on becoming aware of any untrue statement in it, withdrew his consent to it and gave reasonable public notice of the withdrawal and of the reason for it;
   (viii) that, with respect to every untrue statement not purporting to be made on the authority of an expert, or of a public official document or statement, he had reasonable grounds to believe and did, up to the time of the sale of the subdivided land or time share interest, believe that the statement was true;
   (ix) that, with respect to every untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy or extract from a report or valuation, but the director, person named as director, developer or person who authorized the issue of the prospectus is liable to pay compensation as aforesaid if it is proved that he had no reasonable grounds to believe that the person making the statement, report or valuation was competent to make it; or
   (x) that, with respect to every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document.

(2) In this section "prospectus" includes every statement and report and summary of report required to be filed with the prospectus under this Part.

61. Appendix B, s. 2.

62. Appendix A, s. 3.

63. The Condominium Property Act R.S. Ch. C-26. Appendix J, s. 3.
Appendix A, s. 26(3)
Appendix B, s. 28(2)
Appendix J, s. 20(4).

Appendix B s. 4(g).


Appendix C.

Appendix C.

Appendix G.

Appendix C.

Appendix G.

The Condominium Act, C.57, Appendix E.

The Condominium Property Act, S.N.S. 1970-71, Ch. 12.
Appendix F.

Condominium Property Act, R.S.N.B. Ch. C-16.
Appendix D.

Appendix H, s. 3.

Appendix A s. 26(3)
Appendix B s. 28(2)
Appendix C s. 12(3)
Appendix D s. 10(3)
Appendix E s. 14(2)
Appendix F s. 13(3)
Appendix G s. 28(5)
Appendix H s. 13(3)
Appendix J s. 20(4)

(N.S.S.C. Trial Div.).


Appendix A s. 36
Appendix B s. 36
Appendix C s. 14(1)(g)
Appendix H s. 16(6)
Appendix J s. 22(3)

Appendix D.

Appendix G.

Appendix B.
91. (1) No subdivision or reference plan shall be deposited by the registrar unless it has first been approved by the approving officer.

(2) Subsection (1) does not apply
(a) where, under section 94, the plan only consolidates into a single parcel lawfully accreted land and another parcel, or
(b) subject to section 99 (2), to a reference plan deposited under section 99 (1) (e), (f), (g), (h) and (j), or 100.

84. Municipal Act, R.S.B.C. 1979, Ch. 290, S. 727(9).

(9) All works and services required to be constructed and installed at the expense of the owner of land proposed to be subdivided under a bylaw under this section shall be constructed and installed to the standards prescribed in the bylaw prior to the approval of the subdivision by the approving officer, unless the owner of the land
(a) deposits with the municipality a bond in the form and amount, if any, prescribed in the bylaw or otherwise, in a form and amount satisfactory to the approving officer having regard to the cost of installing and paying for all works and services required pursuant to the bylaw; and
(b) enters an agreement with the municipality to construct and install the prescribed works and services by a specified date or forfeit the amount secured by the bond to the municipality.

85. Planning Act, S.N.S. 1970-71, Ch. P-15, s. 91(3).

SERVICES
(3) A subdivision by-law may require a subdivider before approval is endorsed on a final plan of subdivision

(a) to install water, sewer and other services;

(b) to construct, lay out, grade and pave, or any of them, any proposed street in the subdivision,

or, in the alternative to clauses (a) and (b),

(c) to enter into a bond or other security satisfactory to the council to install and provide the streets, sewer, water and other services to the standards set out in the by-law;

(d) to provide a bond or other security for the maintenance of the installations, for a maximum period of one year from the date of installation.
86. Appendix B.
87. Appendix B.
88. Appendix J.
89. Appendix J.
90. Appendix B.
91. Appendix B.
94. Real Estate Act, R.S.B.C. 1979, Ch. 356, S. 50(4).

(4) Notwithstanding subsection (3), a developer, or a person on behalf of a developer, may enter into a contract to sell or lease subdivided land
   if
   (a) comprised of proposed strata lots where the proposed strata plan of buildings proposed to be constructed has not been deposited in a land title office; or
   (b) comprised of cooperative units,
   (c) the creation of the proposed strata lots or the cooperative units has been approved by a municipality or other governmental authority and the approval is evidenced in a manner satisfactory to the superintendent;
   (d) all money received from a purchaser or lessee is held in trust in the manner required by section 14, 15 and 16 until,
      (i) in the case of a strata lot, the strata plan is deposited in the appropriate land title office, the premises purchased or leased are capable of being occupied and an instrument evidencing the interest of the purchaser or lessee in the strata lot has been registered in the appropriate land title office;
      (ii) in the case of a cooperative unit, an instrument evidencing the interest of the person acquiring the interest has been delivered to that person; and
   (e) subsection (6) has been complied with;
but no contract in respect of strata lots to which paragraph (a) applies shall pass or purport to pass title to a strata lot, and any contract required by the superintendent to be filed with him shall so state.

95. Supra, footnote 18.
96. Appendix A.
97. Appendix G.
98. Appendix H.

100. *Supra*, footnote 57.


102. Appendix A, s. 70.

103. Appendix B, s. 60.
FOOTNOTES CHAPTER III

1. Appendix G, s. 18(1).
2. Appendix H, s. 11(1).
3. Appendix J.
4. Appendix B, s. 123.
5. Appendix A, s. 24.
6. Appendix A.
7. Appendix B.
8. Appendix G, s. 26(1).
9. Appendix H, s. 12(1).
10. Appendix G, s. 26(3).
11. Appendix A, s. 37(1).
12. Appendix A.
13. Appendix B.
14. Appendix G.
15. Appendix H.
16. Appendix B.
17. Appendix G, s. 39(1).
18. Appendix H.
21. Ibid., p. 575.
22. Ibid., p. 576.
24. Ibid., p. 584.
25. Ibid., p. 327.


28. Ibid., p. 34.

29. This aspect will be considered more fully in Chapter V.


33. Appendix G.

34. Appendix G, s. 22(1).

35. Appendix B, s. 72(1).

36. Appendix J, s. 17(1).

37. Appendix A, s. 21.

38. Appendix D, s. 10(1), s. 14(1).

39. Appendix H, s. 13(1), s. 17(1).

40. Appendix F, s. 10(1)(e).

41. Appendix C, s. 5(1)(h).

42. Appendix E, s. 14(1)(d).

43. Appendix B, s. 18.

44. Appendix F, s. 24(2).

45. Appendix D, s. 22.

46. Appendix C, s. 15(2).

47. **Condominium Statutes of Nova Scotia, Manitoba, Saskatchewan, and Alberta.**

48. Appendix A, s. 43(1).

49. Appendix J, s. 29(1).

50. Appendix B.
51. Appendix H, s. 13(1).
52. Appendix C, s. 12(1).
53. Appendix F, s. 13(1).
54. Appendix D, s. 10(1).
55. Appendix H, s. 17(1).
Appendix C, s. 16(1).
Appendix F, s. 20(1).
Appendix D, s. 14(1).
56. Appendix E, s. 14.
57. Appendix E, s. 7.
58. Appendix G, s. 28.
59. Appendix G, s. 1, 9.
60. Appendix B, s. 26(2).
61. Appendix A, s. 26(2)
62. Appendix F, s. 2(e)
63. Appendix H, s. 3(2)(a).
64. Appendix D, s. 3(2)(e).
65. Appendix A, s. 23(1).
66. Appendix J, s. 19(1).
67. Appendix E, s. 14(c).
68. Appendix C, s. 11(1).
69. Appendix G, s. 15(1), s. 15(5).
70. Appendix B, s. 118(4).
71. Appendix B, s. 1(1).
72. Interpretation Act, R.S.B.C. 1979, Ch. 206.
73. Appendix G, s. 26(1).
74. Appendix H, s. 12(1).
75. Appendix A, s. 14(2).
76. Appendix B, s. 122(3).  
Appendix A, s. 23(4).  
Appendix J, s. 19(3).


80. *Clemens v. Clemens Bros. Ltd. and another* (1976) 2 All E.R. 268 (Ch. Div.).

81. Ibid., at p. 81.


83. *Allen v. Golf Reefs of West Africa Ltd.* (1900) 1 Ch. 656, (1900-3) All E.R. 746, 69 L.J. Ch. 266. (C.A.).


FOOTNOTES - CHAPTER IV

1. Appendix E.


4. Ibid., p. 545.

5. Appendix C, s. 5(5).
   Appendix D, s. 3(3).
   Appendix E, s. 11(3).
   Appendix F, s. 10(3).
   Appendix G, s. 3(4).
   Appendix H, s. 3(3).

6. Appendix D.


8. Appendix D.

9. Appendix C.

10. Appendix F.

11. Appendix H.

12. Appendix G.

13. Appendix G, s. 3(3).

14. Appendix G, s. 3(4).

15. Appendix G, s. 28(1).

16. Appendix G, s. 28(2).

17. Appendix G, s. 9.

18. Appendix G, s. 1(1)(x).

19. Appendix G, s. 28(4).

20. Appendix G, s. 29(1).

21. Appendix G, s. 38(1).
22. Appendix J, s. 20.
   Appendix A, s. 26.
   Appendix B, s. 28.

23. Appendix A.

24. Appendix J.


29. Ibid., at p. 575.

30. Ibid., at p. 30.

31. Appendix B, s. 42.


34. Ibid., p. 290.

35. Appendix B, s. 26(2), s. 1(1).

36. Appendix A, s. 26(2), s.(1)(5).

37. Appendix J.

38. Appendix B, s. 117(h).

39. Appendix A, s. 26(4).
   Appendix J, s. 20(5).

40. Appendix B.


43. Appendix D, s. 10(2).
   Appendix F, s. 14(2).
   Appendix C, s. 12(2).
   Appendix H, s. 13(2).
   Appendix G, s. 28(4).


45. Ibid., p. 123.


47. Ibid., p. 342.


49. Ibid., p. 75.

FOOTNOTES - CHAPTER V


18. Appendix D, s. 1(1).
   Appendix F, s. 1(1).
   Appendix H, s. 1(1)(e), (o).
   Appendix G, s. 1(1)(g), (s).
   Appendix E, s. 2(c), (j).
   Appendix C, s. 1(f), (r).

19. Appendix J, s. 5(2).

20. Appendix J, s. 2(1)(d).
21. Appendix J, Schedule A, s. 2(b).
22. Appendix A, s. 1(1)(d).
23. Appendix A.
24. Appendix B, s. 12(1).
25. Appendix D, s. 9(18).
   Appendix F, s. 12(21).
   Appendix H, s. 10(18).
26. Appendix E.
27. Appendix C.
28. Appendix J.
29. Appendix A.
30. Appendix G.
31. Appendix B.
33. That section was identical to s. 9(18) of the New Brunswick Condominium Property Act, see footnote 24.
35. Supra, see footnotes 2, 3, 4, 5.
40. Ibid., p. 31.
41. Ibid., p. 31.


46. Ibid., p. 28.

47. Loader v. Rose Park Wellesley Investments Ltd., supra, footnote 38A.

48. Ibid., at p. 389.


51. Ibid., p. 159.

52. Loader v. Rose Park Wellesley Investments Ltd., supra, footnote 38A.

53. Ibid., at p. 390.


55. Ibid., p. 47.

56. Loader v. Rose Park Wellesley Investments Ltd., supra, footnote 38A.

57. Frontenac Condominium Corporation No. 1 v. Joe Macciochi and Sons Ltd., supra, footnote 33, p. 350 (D.L.R.).


60. Ibid., p. 33.

61. Ibid., p. 46.


63. Ibid.
64. *York Condominium Corporation No. 76 v. Rose Park Wellesley Investments Ltd.*, supra, footnote 46.

65. Appendix D, s. 9(18).
    Appendix F, s. 12(21).
    Appendix H, s. 10(18).

66. Appendix G.

67. Although one would have to also consider the effect of the powers given to a corporation under s. 14 of the Saskatchewan Interpretation Act.


69. Appendix B.


73. Appendix G, s. 56-58 incl.

74. *Residential Tenancy Act, S.B.C. Ch. 15.*

75. Ibid., s. 38-45 incl.

76. eg. A convenant in a residential tenancy agreement which is unreasonable is unenforceable under the Residential Tenancy Act (s. 4(3)) while the Condominium Act has no provision directed towards unreasonable bylaws.

77. *Fraser-Reid v. Droumtsekas et al.*, supra, footnote 5.

78. *Carleton Condominium Corportion No. 11 v. Shenkman Corporation Ltd.*, supra footnote 51.

FOOTNOTES - CHAPTER VI

1. Appendix G.
2. Appendix G, s. 26(1).
   Appendix H, s. 12(1).
3. Appendix B, s. 17.
4. Appendix A, s. 14(2).
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Levy v. Stogdon (1898) 1 Ch. 478 (C.A.)

Lloyd's Bank Ltd. v. Bundy (1975) Q.B. 326 (C.A.)


M'Alister (or Donoghue) v. Stevenson (1932) A.C. 562 (H.L.)


Miller v. Cannon Hill Estates Ltd. (1931) 4 All E.R. 390 (C.A.)

Mountford v. Scott (1974) 1 All E.R. 248 (Ch. Div.)


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Perry v. Sharon Development Ltd. (1937) 4 All E.R. 390 (C.A.)


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Re York Condominium Corporation No. 42 and Melanson (1975) 9 O.R.
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August 15, 1984
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Dissolution of corporation

August 15, 1984
Definitions

(a) "bare land unit" means a unit defined in clause (v)(ii);

(a.1) "board" means the board of a corporation as provided for in section 23;

(b) "building" means one or more buildings on the same parcel;

(c) "by-laws" means the by-laws of a corporation as amended from time to time and includes any by-laws passed in substitution for them;

(d) "common property" means so much of the parcel as is not comprised in a unit shown in a condominium plan but does not include land shown on the condominium plan that has been provided for the purposes of public roadways, public utilities and reserve land under the Planning Act;

(e) "condominium plan" means a plan registered in a land titles office that complies with section 6 and includes a plan of redivision registered under section 15;

(f) "corporation" means a body incorporated by section 20;

(g) "Court" means the Court of Queen's Bench;

(h) "developer" means a person who, alone or in conjunction with other persons, sells or offers for sale to the public

(i) residential units, or

(ii) proposed residential units,

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

1(1) In this Act,

(a) "bare land unit" means a unit defined in clause (v)(ii);

(a.1) "board" means the board of a corporation as provided for in section 23;

(b) "building" means one or more buildings on the same parcel;

(c) "by-laws" means the by-laws of a corporation as amended from time to time and includes any by-laws passed in substitution for them;

(d) "common property" means so much of the parcel as is not comprised in a unit shown in a condominium plan but does not include land shown on the condominium plan that has been provided for the purposes of public roadways, public utilities and reserve land under the Planning Act;

(e) "condominium plan" means a plan registered in a land titles office that complies with section 6 and includes a plan of redivision registered under section 15;

(f) "corporation" means a body incorporated by section 20;

(g) "Court" means the Court of Queen's Bench;

(h) "developer" means a person who, alone or in conjunction with other persons, sells or offers for sale to the public

(i) residential units, or

(ii) proposed residential units,
that have not previously been sold to the public;

(i) "landlord" means an owner of a residential unit that is being rented and includes a person acting on behalf of the owner;

(j) "local authority" means

(i) a city, town, village, municipal district or county,

(ii) the Minister of Municipal Affairs, in the case of an improvement district or a special area, or

(iii) the Minister of the Crown in right of Canada charged with the administration of the National Parks Act (Canada), in the case of a National Park;

(k) "management agreement" means an agreement entered into by a corporation governing the general control, management and administration of

(i) the real and personal property of the corporation associated with the residential units, and

(ii) the common property associated with the residential units;

(l) "Minister" means the Minister of Consumer and Corporate Affairs;

(m) "municipality" means the area of a city, town, village, municipal district, county, improvement district, special area or National Park;

(n) "owner" means a person who is registered as the owner of

(i) the fee simple estate in a unit, or

(ii) the leasehold estate in a unit when the parcel on which the unit is located is held under a lease and a certificate of title has been issued under section 3(1)(b) in respect of that lease;

(o) "parcel" means the land comprised in a condominium plan;

(p) "purchase agreement" means an agreement with a developer whereby a person purchases a residential unit or proposed residential unit or acquires a right to purchase a residential unit or proposed residential unit;

(q) "recreational agreement" means an agreement entered into by a corporation that allows

(i) persons, other than the owners, to use recreational facilities located on the common property, or

(ii) the owners to use recreational facilities not located on the common property;

(r) "residential unit" means

(i) in the case of a unit that is situated within a building, a unit that is used or intended to be used for residential purposes, and
(ii) in the case of a bare land unit, a unit that is used or intended to be used for residential purposes or that has been represented by a developer as being intended to be used for residential purposes;

(s) "special resolution" means a resolution

(i) passed at a properly convened meeting of a corporation by a majority of not less than 75% of all the persons entitled to exercise the powers of voting conferred by this Act or the by-laws and representing not less than 75% of the total unit factors for all the units, or

(ii) signed by not less than 75% of all the persons who, at a properly convened meeting of a corporation, would be entitled to exercise the powers of voting conferred by this Act or the by-laws and representing not less than 75% of the total unit factors for all the units;

(t) "title document" means, in respect of a residential unit, a transfer of the unit that is registrable under the Land Titles Act;

(u) "unanimous resolution" means a resolution

(i) passed unanimously at a properly convened meeting of the corporation by all the persons entitled to exercise the powers of voting conferred by this Act or the by-laws and representing the total unit factors for all the units, or

(ii) signed by all persons who, at a properly convened meeting of a corporation, would be entitled to exercise the powers of voting conferred by this Act or the by-laws;

(v) "unit" means

(i) in the case of a building, a space that is situated within a building and described as a unit in a condominium plan by reference to floors, walls and ceilings within the building, and

(ii) in the case other than that of a building, land that is situated within a parcel and described as a unit in a condominium plan by reference to boundaries governed by monuments placed pursuant to the provisions of the Surveys Act respecting subdivision surveys;

(w) "unit factor" means the unit factor for a unit as specified or apportioned in accordance with section 6(g) or 15(5), as the case may be.

(2) Other expressions used in this Act and not defined in subsection (1) have the same meanings as may be assigned to them in the Land Titles Act.

1.1(1) The Planning Act applies to any building or land that is subject to a condominium plan or a proposed condominium plan or in respect of which a condominium plan is terminated.

(2) Notwithstanding subsection (1), the provisions of the Planning Act relating to the subdivision of land do not apply to the division of a building under a condominium plan if
(a) the surface boundaries of the parcel as defined in this Act on which that building is located correspond to the boundaries of a parcel as defined in the Planning Act, and

(b) each building located on the parcel that contains a unit contains 2 or more units.

1.2 For the purposes of the Planning Act and the Land Titles Act a condominium plan is a plan of subdivision.

1983 c71 s3

2(1) A building or land may be designated as a unit or part of a unit or divided into 2 or more units by the registration of a condominium plan under this Act.

(2) The Registrar shall not register a condominium plan unless that condominium plan describes 2 or more units in it.

(3) For the purposes of the Land Titles Act, a condominium plan shall be deemed on registration to be embodied in the register.

(4) This Act applies only with respect to land held in fee simple, excepting thereout all mines and minerals.

(5) Notwithstanding subsection (4), if land is held under lease and a certificate of title has been issued under the Land Titles Act in respect of the lease, this Act applies to the land described in the certificate of title, excepting thereout all mines and minerals.

RSA 1980 cC-22 s2.1983 c71 s4

3(1) On registering a condominium plan the Registrar

(a) shall cancel the certificate of title to the parcel described in the plan, except as to any mines and minerals comprised in it, and

(b) shall issue a separate certificate of title for each unit described in the plan,

and any interests affecting the parcel that are noted on the certificate of title cancelled under clause (a) shall be endorsed on the certificates of title issued under clause (b).

(2) No more than one unit may be included in one certificate of title and no other land except the owner’s share in the common property, may be included in the same certificate of title with a unit.

(3) After a certificate of title to a unit is issued pursuant to subsection (1), the unit comprised in it may devolve or be transferred, leased, mortgaged or otherwise dealt with in the same manner and form as land held under the Land Titles Act and the provisions of that Act apply to those dealings in so far as they do not conflict with this Act or the regulations.

RSA 1980 cC-22 s3

4(1) The Registrar, in issuing a certificate of title for a unit, shall certify on it the owner’s share in the common property.

(2) The common property comprised in a registered condominium plan is held by the owners of all the units as tenants in common in shares proportional to the unit factors for their respective units.

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(3) Except as provided in this Act, a share in the common property shall not be disposed of or become subject to a charge except as appurtenant to the unit of an owner and a disposition of or charge on a unit operates to dispose of or charge that share in the common property without express reference to it.

RSA 1980 cC-22 s4

5 Except to the extent that an interest endorsed on a certificate of title relates to that particular unit, the owner of the unit is only liable in respect of that interest in proportion to the unit factor for his unit.

RSA 1980 C-22 s5

Condominium Plans

6(1) Every plan presented for registration as a condominium plan shall

(a) be described in the heading of the plan as a condominium plan,

(b) delineate the external surface boundaries of the parcel and the location of the building, if any, in relation to them,

(b.1) except where the condominium plan is to divide a building referred to in section 1.1(2), delineate that portion of the land that is to be provided for the purposes of public roadways, public utilities and reserve land under the Planning Act,

(c) bear a statement containing those particulars as may be necessary to identify the title to the parcel,

(d) include a drawing illustrating the units and distinguishing the units by numbers or other symbols,

(e) define the boundaries of each unit,

(f) where a building is to be divided into units, show the approximate floor area of each unit,

(f.1) where land is to be divided into bare land units, show the approximate area of each unit,

(g) have endorsed on it a schedule specifying in whole numbers the unit factor for each unit in the parcel,

(h) be signed by the owner of the property,

(i) have endorsed on it the address at which documents may be served on the corporation concerned in accordance with section 63, and

(j) contain any other features prescribed by the regulations.

(2) If a plan presented for registration as a condominium plan includes residential units, that plan shall, in addition to meeting the requirements of subsection (1), delineate to the satisfaction of the Registrar the boundaries of the areas that are or may be leased under section 41 to an owner of a residential unit.
(3) The Registrar shall, within 28 days from the day a condominium plan is registered, mail to the local authority of the municipality in which the parcel is located, a copy of the registered condominium plan.

RSA 1980 cC-22 s6; 1983 c71 s5

7(1) Unless otherwise stipulated in the condominium plan, if

(a) a boundary of a unit is described by reference to a floor, wall or ceiling, or

(b) a wall located within a unit is a load bearing wall,

the only portion of that floor, wall or ceiling, as the case may be, that forms part of the unit is the finishing material that is in the interior of that unit, including any lath and plaster, paneling, gypsum board, panels, flooring material or coverings or any other material that is attached, laid, glued or applied to the floor, wall or ceiling, as the case may be.

(2) Notwithstanding subsection (1), all doors and windows of a unit are part of the unit unless otherwise stipulated in the condominium plan.

(3) Notwithstanding subsections (1) and (2), if a condominium plan was registered prior to January 1, 1979, the common boundary of any unit described in the condominium plan with another unit or with common property is, unless otherwise stipulated in the condominium plan, the centre of the floor, wall or ceiling, as the case may be.

RSA 1980 cC-22 s7

8(1) Every plan presented for registration as a condominium plan shall be endorsed with or accompanied by

(a) a certificate of a land surveyor registered, or a holder of a permit issued, under the *Land Surveyors Act* stating

(i) that the boundaries of the parcel have been established or re-established in accordance with the *Surveys Act*, and

(ii) where there is a building shown on the plan, that the building is within the external surface boundaries of the parcel that is the subject of the plan and, if eaves or guttering project beyond those external boundaries, that an appropriate easement has been granted as an appurtenance to the parcel,

and

(b) where there is a building shown on the plan that is to contain units,

(i) a certificate of

(A) a registered architect, visiting project architect, architects corporation or joint firm under the *Architects Act*,

(B) an Alberta land surveyor registered, or a holder of a permit issued, under the *Land Surveyors Act*.

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(C) a professional engineer registered or licensed under the Engineering, Geological and Geophysical Professions Act, or

(D) a holder of a permit issued under the Engineering, Geological and Geophysical Professions Act, if that holder is authorized to engage in the practice of engineering.

stating that the units shown in the plan are the same as those existing,

and

(ii) a certificate of the local authority or of a person designated by the local authority stating that the proposed division of the building, as illustrated in the plan, has been approved by the local authority.

(2) If an application is made for a certificate under subsection (1)(b)(ii), the local authority

(a) may, with respect to a building that was constructed prior to August 1, 1966 or for which the building permit was issued prior to August 1, 1966, prohibit the issue of the certificate if it considers it proper to do so, and

(b) shall, with respect to a building for which a building permit was issued on or after August 1, 1966, direct the issue of the certificate if it is satisfied that the building conformed to

(i) the development scheme, development control by-law, zoning by-law or land use by-law, as the case may be, and

(ii) any permit issued under that scheme or by-law, that existed at the time the building permit was issued.

(3) Repealed 1983 c71 s6.

RSA 1980 cC-22 s8; RSA 1980 cA-44.1 s77; 1981 cE-11.1 s88; 1981 cL-4.1 s77; 1983 c71 s6

Sale of Residential Units by Developers

A developer shall not sell or agree to sell a residential unit or a proposed residential unit unless he has delivered to the purchaser a copy of

(a) the purchase agreement,

(b) the by-laws or proposed by-laws,

(c) any management agreement or proposed management agreement,

(d) any recreational agreement or proposed recreational agreement,

(e) the lease of the parcel, if the parcel on which the unit is located is held under a lease and the certificate of title to the unit or proposed unit has been or will be issued under section 3(1)(b),

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(f) any mortgage that affects or proposed mortgage that will affect the title to the residential unit or proposed residential unit or, in respect of that mortgage or proposed mortgage, a notice prescribed under subsection (2), and

(g) the condominium plan or proposed condominium plan.

(2) A developer may deliver to the purchaser in respect of a mortgage or proposed mortgage a written notice stating

(a) the maximum principal amount available under the mortgage,

(b) the maximum monthly payment that may be paid under the mortgage,

(c) the amortization period,

(d) the term,

(e) the interest rate or the formula, if any, for determining the interest rate, and

(f) the prepayment privileges, if any.

(3) Subject to subsection (4), a purchaser of a residential unit under this section may, without incurring any liability for doing so, rescind the purchase agreement within 10 days from the date the purchase agreement was executed by the parties to it.

(4) A purchaser may not rescind the purchase agreement under subsection (3) if all the documents required to be delivered to the purchaser under subsection (1) have been delivered to the purchaser not less than 10 days prior to the execution of the purchase agreement by the parties to it.

(5) If a purchase agreement is rescinded under subsection (3), the developer shall, within 10 days from his receipt of a written notice by the purchaser of the rescission, return to the purchaser all of the money paid in respect of the purchase of the residential unit.

Every developer who enters into a purchase agreement shall include in the purchase agreement the following:

(a) a notification that is at least as prominent as the rest of the contents of the purchase agreement and that is printed in red ink on the outside front cover or on the first page of the purchase agreement stating as follows:

"The purchaser may, without incurring any liability for doing so, rescind this agreement within 10 days of its execution by the parties to it unless all of the documents required to be delivered to the purchaser under section 9 of the Condominium Property Act have been delivered to the purchaser not less than 10 days prior to the execution of this agreement by the parties to it.;"

(b) a description, drawing or photograph showing

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(i) where there is a building, the interior finishing of and all major improvements to the common property located within a building,

(ii) the recreational facilities, equipment and other amenities to be used by the persons residing in or on the residential units,

(iii) the equipment to be used for the maintenance of the common property,

(iv) the location of roadways, walkways, fences, parking areas and recreational facilities,

(v) the landscaping, and

(vi) where there is a building, the exterior finishing of the building,

as they will exist when the developer has fulfilled his obligations under the purchase agreement;

(c) the amount or estimated amount of the monthly unit contributions in respect of the residential unit;

(d) the unit factor of the unit and the basis of unit factor apportionment for all units comprised in the condominium plan.

11(1) A developer or a person acting on his behalf shall hold in trust all the money paid by a purchaser under a purchase agreement, other than rents, security deposits or mortgage advances, and

(a) if the improvements that the developer is obligated to provide to the residential unit and the common property are substantially completed, that money may be paid to the developer on delivery of the title document to the purchaser, or

(b) if the improvements that the developer is obligated to provide to the residential unit are substantially completed but the improvements that the developer is obligated to provide to the common property are not substantially completed,

(i) not more than 50% of that money less the interest earned on it may be paid to the developer on delivery of the title document to the purchaser, and

(ii) on the improvements that the developer is obligated to provide to the common property being substantially completed, the balance of that money and all the interest earned on the total amount held in trust in respect of that purchase agreement may be paid to the developer.

(2) The developer or a person acting on his behalf who receives money that is to be held in trust under subsection (1) shall forthwith deposit the money into an interest bearing trust account maintained in a bank, treasury branch, trust company or credit union in Alberta.

(3) Money deposited under subsection (2) shall be kept on deposit in Alberta.
(4) If money is being held in trust under subsection (1) and the purchaser of the residential unit takes possession of or occupies the unit prior to receiving the title document, the interest earned on that money from the day the purchaser takes possession or occupies the unit to the day he receives the title document shall be applied against the purchase price of the unit.

(5) Subject to subsection (4), the developer is entitled to the interest earned on money held in trust under this section.

(6) For the purpose of this section, improvements to the residential unit or the common property, as the case may be, are deemed to be substantially completed when the improvements are ready for use or are being used for the purpose intended.

(7) This section does not apply in respect of money paid to a developer, or to a person acting on behalf of a developer, under a purchase agreement if that money is held under the provisions of a plan, agreement, or arrangement approved by the Minister that provides for the receipt, handling and disbursing of all or a portion of that money or indemnifies against loss of all or a portion of that money or both.

RSA 1980 cC-22 s11; 1983 c71 s8

Exemption

12 Section 11 does not apply if the purchaser does not perform his obligations under the purchase agreement.

RSA 1980 cC-22 s12

Limit on security deposit

13 If a purchaser of a residential unit, prior to receiving title to the unit, rents that unit from the developer, the amount that the developer may charge the purchaser as a security deposit in respect of the unit shall not exceed one month's rent charged for the unit.

RSA 1980 cC-22 s13

Management Agreements

14(1) In this section, "developer's management agreement" means a management agreement that was entered into by a corporation at a time when its board was comprised of persons who were elected to the board while the majority of residential units were owned by a developer.

(2) Subject to subsection (3), a corporation may, notwithstanding anything contained in a developer's management agreement or a collateral agreement, terminate a developer's management agreement at any time after its board is comprised of persons who were elected to the board after the majority of the residential units were owned by persons other than a developer.

(3) A developer's management agreement

(a) may not be terminated under subsection (2) without cause until 2 years have elapsed from the day that the agreement was entered into, except when the agreement permits termination at an earlier date, and

(b) may only be terminated under subsection (2) on the corporation giving 60 days' written notice to the other party to the agreement of its intention to terminate the agreement.
and the corporation is not liable to the other party to the agreement by reason only of the agreement being terminated under this section.

Redivision

15(1) Any owner or owners may, with the approval of the local authority, redivide his or their units by registering a condominium plan relating to the unit or units so redivided in the manner provided by this Act for the registration of condominium plans.

(2) Except as provided in this section, the provisions of this Act relating to condominium plans apply with all necessary modifications to a redivision of units.

(3) Notwithstanding section 20, the owners of units in a condominium plan of redivision are not a corporation, but are, on the date of registration of the condominium plan of redivision, members of the corporation formed on registration of the original condominium plan.

(4) On registration of a condominium plan of redivision, units comprised in it are subject to the burden and have the benefit of any easements affecting those units in the original condominium plan that are included in the condominium plan of redivision.

(5) The schedule endorsed on a condominium plan of redivision, as required by section 6(g), shall apportion among the units the unit factor or factors for the unit or units in the original condominium plan that are included in the redivision.

(6) Before registering a proposed condominium plan of redivision, the Registrar shall amend the original condominium plan in the manner prescribed by the regulations.

(7) On registration of a condominium plan of redivision, the land comprised in it shall not be dealt with by reference to units in the original condominium plan.

Conversions

16 If premises are

(a) rented for residential purposes to a tenant who is not a party to a purchase agreement, and

(b) not included in a condominium plan,

the owner of those premises or a person acting on his behalf shall not sell or agree to sell those premises as a residential unit until the condominium plan that includes those premises is registered at a land titles office.

RSA 1980 cC-22 s16; 1983 c71 s9

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Easements

17 After the registration of a condominium plan, there is implied in respect of each unit shown in it,

(a) in favour of the owner of the unit and as appurtenant to the unit, an easement for the subjacent and lateral support of the unit by the common property and by every other unit capable of affording support, and

(b) in the case of a unit located in a building,

(i) in favour of the owner of the unit, and as appurtenant to the unit, an easement for the shelter of the unit by the common property and by every other unit capable of affording shelter, and

(ii) in favour of the owner of the unit, and as appurtenant to the unit, easements for the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air and other services including telephone, radio and television services through or by means of any pipes, wires, cables or ducts for the time being existing in the parcel to the extent to which those pipes, wires, cables or ducts are capable of being used in connection with the enjoyment of the unit,

(c) repealed 1983 c71 s10.

18(1) After the registration of a condominium plan, there is implied in respect of each unit shown in it,

(a) as against the owner of the unit, an easement, to which the unit is subject, for the subjacent and lateral support of the common property and of every other unit capable of enjoying support, and

(b) in the case of a unit located in a building,

(i) as against the owner of the unit, an easement, to which the unit is subject, to provide shelter to the common property and to every other unit capable of enjoying the shelter, and

(ii) as against the owner of the unit, easements, to which the unit is subject, for the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air and other services including telephone, radio and television services through or by means of any pipes, wires, cables or ducts for the time being existing within the unit, as appurtenant to the common property and also to every other unit capable of enjoying those easements,

(c) repealed 1983 c71 s11.

(2) When an easement is implied by this section, the owner of any utility service who is providing his service to the parcel, or to any
unit on it, is entitled to the benefit of any of those easements that are appropriate to the proper provision of that service, but not to the exclusion of the owner of any other utility service.

RSA 1980 cC-22 s19

19(1) Easements or restrictions as to user implied or created by this Act or the by-laws take effect and are enforceable

(a) without any memorial or notification on that part of the register constituting titles to the dominant or servient tenements, and

(b) without any express indication of those tenements.

(2) All ancillary rights and obligations reasonably necessary to make easements effective apply in respect of easements implied by this Act, including the right of an owner of a dominant tenement to enter a servient tenement and replace, renew or restore any thing the dominant tenement is entitled to benefit from.

RSA 1980 cC-22 s19

Condominium Corporation

20(1) On the registration of a condominium plan, there is constituted a corporation under the name “The Owners: Condominium Plan No. .........” (the number to be specified being the number given to the plan on registration).

(2) A corporation consists of all those persons

(a) who are owners of units in the parcel to which the condominium plan applies, or

(b) who are entitled to the parcel when the condominium arrangement is terminated pursuant to section 51 or 52.

(3) Without limiting the powers of the corporation under this or any other Act, a corporation may

(a) sue for and in respect of any damage or injury to the common property caused by any person, whether an owner or not, and

(b) be sued in respect of any matter connected with the parcel for which the owners are jointly liable.

(4) The Companies Act and the Business Corporations Act do not apply to a corporation.

RSA 1980 cC-22 s20; 1983 c22 s2

Voting Rights

21(1) The voting rights of the owner of a unit are determined by the unit factor for his unit.

(2) When an owner’s interest is subject to a registered mortgage, a power of voting conferred on an owner by this Act or the by-laws,

(a) if a unanimous resolution is required, may not be exercised by the owner, but is exercisable by the registered mortgagee first entitled in priority, and

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(b) in other cases, is exercisable by the mortgagee first entitled in priority and may not be exercised by the owner if the mortgagee is present personally or by proxy.

(3) Subsection (2) does not apply unless the mortgagee has given written notice of his mortgage to the corporation.

(4) An owner or mortgagee, as the case may be, may exercise his right to vote personally or by proxy.

RSA 1980 cC-22 s21

22(1) Any powers of voting conferred by this Act or the by-laws may be exercised

(a) in the case of an owner who is a minor, by the guardian of his estate or, if no guardian has been appointed, by the Public Trustee, or

(b) in the case of an owner who is for any reason unable to exercise control over his property, by the person who for the time being is authorized by law to exercise control over that property.

(2) If the Court, on application by the corporation or by an owner, is satisfied that there is no person capable, willing or reasonably available to vote in respect of a unit, the Court

(a) shall, in cases when a unanimous resolution is required by this Act, and

(b) may, in its discretion, in any other case, appoint the Public Trustee or some other person for the purpose of exercising the powers of voting under this Act and the by-laws as the Court determines.

(3) On making an appointment under this section, the Court may make any order it considers necessary or expedient to give effect to the appointment.

RSA 1980 cC-22 s22

Board of a Corporation

23(1) A corporation shall have a board of managers that shall be constituted as provided by the by-laws of the corporation.

(2) A corporation shall, within 15 days of a person becoming or ceasing to be a member of the board, file at the land titles office a notice in the prescribed form stating the name and address of that person and the day that the person became or ceased to be, as the case may be, a member of the board.

(3) The powers and duties of a corporation shall, subject to any restriction imposed or direction given at a general meeting, be exercised and performed by the board of the corporation.

(4) All acts done in good faith by a board are, notwithstanding that it is afterwards discovered that there was some defect in the election or appointment or continuance in office of any member of the board,
as valid as if the member had been properly elected or appointed or had properly continued in office.

RSA 1980 cC-22 s23

Annual Meetings of the Corporation

24 When a developer registers a condominium plan, he shall within
(a) 90 days from the day that 50% of the residential units are sold, or
(b) 180 days from the day that the first residential unit is sold.
whichever is sooner, convene a meeting of the corporation at which a board shall be elected.

RSA 1980 cC-22 s24

25(1) The board shall, once every year, convene an annual general meeting of the owners.
(2) An annual general meeting of the owners shall be convened by the board within 15 months of the conclusion of the immediately preceding annual general meeting.

RSA 1980 cC-22 s25

By-laws

26(1) The by-laws shall regulate the corporation and provide for the control, management and administration of the units, the real and personal property of the corporation and the common property.
(2) Any by-law may be amended, repealed or replaced by a special resolution.
(3) An amendment, repeal or replacement of a by-law does not take effect until
(a) the corporation files a copy of it with the Registrar, and
(b) the Registrar has made a memorandum of the filing on the condominium plan.
(4) No by-law operates to prohibit or restrict the devolution of units or any transfer, lease, mortgage or other dealing with them or to destroy or modify any easement implied or created by this Act.
(5) The by-laws bind the corporation and the owners to the same extent as if the by-laws had been signed and sealed by the corporation and by each owner and contained covenants on the part of each owner with every other owner and with the corporation to observe and perform all the provisions of the by-laws.

RSA 1980 cC-22 s26

27 On the registration of a condominium plan the by-laws of the corporation are the by-laws set forth in Appendix 1.

RSA 1980 cC-22 s27
28 If

(a) a corporation existed on May 16, 1978, and

(b) that corporation was regulated by the by-laws set forth in Appendix 2, Schedules A and B as those by-laws existed on May 15, 1978,

that corporation shall continue to be regulated by those by-laws and for that purpose those by-laws remain in force in respect of that corporation until they are repealed or replaced.

RSA 1980 cC-22 s28

29(1) If an owner, tenant or other person residing in or on a residential unit contravenes a by-law, the corporation may take proceedings under Part 4 of the Provincial Court Act to recover from the owner or tenant or both a penalty of not more than $200 in respect of that contravention.

(2) In an action under subsection (1), the corporation must establish to the satisfaction of the provincial judge hearing the matter that

(a) the by-law was properly enacted, and

(b) the by-law was contravened by the owner, tenant or other person residing in or on the residential unit.

(3) On hearing the matter, the provincial judge may

(a) give judgment against the defendant in the amount being sued for or any lesser amount as appears proper in the circumstances, or

(b) dismiss the action,

and make an award as to costs as appears proper in the circumstances.

(4) A corporation may not commence an action under this section unless it is authorized by by-law to do so.

(5) For the purposes of subsection (2)(a), a copy of a by-law that is certified by the Registrar as being a true copy of the by-law filed at the land titles office is prima facie proof

(a) of the contents of the by-law, and

(b) that the by-law was properly enacted.

(6) The commencement of an action against a person under this section does not restrict, limit or derogate from a remedy that an owner or the corporation may have against that person.

RSA 1980 cC-22 s29; 1983 c71 s12

Powers and Duties of Corporation

30(1) A corporation is responsible for the enforcement of its by-laws and the control, management and administration of its real and personal property and the common property.

(2) Without restricting the generality of subsection (1), the duties of a corporation include the following:

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(a) to keep in a state of good and serviceable repair and properly maintain the real and personal property of the corporation and the common property;

(b) to comply with notices or orders by any local authority or public authority requiring repairs to or work to be done in respect of the parcel.

(3) A corporation may by a special resolution acquire or dispose of an interest in real property.

31(1) In addition to its other powers under this Act, the powers of a corporation include the following:

(a) to establish a fund for administrative expenses sufficient, in the opinion of the corporation, for the control, management and administration of the common property, for the payment of any premiums of insurance and for the discharge of any other obligation of the corporation;

(b) to determine from time to time the amounts to be raised for the purposes mentioned in clause (a);

(c) to raise amounts so determined by levying contributions on the owners in proportion to the unit factors for their respective units;

(d) to recover from an owner by an action in debt any sum of money spent by the corporation

(i) pursuant to a by-law, or

(ii) as required by a local authority or other public authority, in respect of the unit or common property that is leased to that owner under section 41.

(2) A contribution levied as provided in subsection (1) is due and payable on the passing of a resolution to that effect and in accordance with the terms of the resolution, and may be recovered by an action for debt by the corporation

(a) from the person who was the owner at the time when the resolution was passed, and

(b) from the person who was the owner at the time when the action was instituted,

both jointly and severally.

(3) A corporation shall, on the application of an owner or a person authorized in writing by him, certify

(a) the amount of any contribution determined as the contribution of the owner,

(b) the manner in which the contribution is payable,

(c) the extent to which the contribution has been paid by the owner, and
(d) the interest owing, if any, on any unpaid balance of a contribution and, in favour of a person dealing with that owner the certificate is conclusive proof of the matters certified in it.

(4) A corporation may file a caveat against the certificate of title to an owner's unit for the amount of a contribution levied on the owner but unpaid by him.

(5) On the filing of the caveat under subsection (4) the corporation has a charge against the unit equal to the unpaid contribution.

(6) A charge under subsection (5) has the same priority from the date of filing of the caveat as a mortgage under the *Land Titles Act* and may be enforced in the same manner as a mortgage.

(7) The *Dower Act* and the *Exemptions Act* do not apply to proceedings under subsection (6).

(8) If a corporation has filed a caveat under this section, the corporation on the payment to it of the amount of the charge shall withdraw the caveat.

RSA 1980 cC-22 s31

32 The corporation may, if permitted to do so by by-law, charge interest on any unpaid balance of a contribution owing to it by an owner.

RSA 1980 cC-22 s32

33 If any interest referred to in section 32 or a deposit referred to in section 44(3) is owing by an owner to a corporation, the corporation may, in addition to any rights of recovery that it has in law, recover that amount in the same manner as a contribution under section 31 and for that purpose that amount shall be considered as a contribution under section 31.

RSA 1980 cC-22 s33

34 If a corporation registers a caveat against the title to a unit under section 31, it may recover from the owner of the unit the cost incurred in preparing and registering the caveat and in discharging the caveat.

RSA 1980 cC-22 s34

35 Subject to section 30(3), a corporation may invest any funds not immediately required by it only in those investments in which a trustee may invest under the *Trustee Act*.

RSA 1980 cC-22 s35

36 On the written request of an owner, purchaser or mortgagee of a unit the corporation shall, within 20 days of receiving that request, provide to the person making the request one or more of the following as requested by that person:

(a) a statement setting forth the amount of any contributions due and payable in respect of a unit;

(b) the particulars of

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(i) any action commenced against the corporation and served on the corporation,
(ii) any unsatisfied judgment or order for which the corporation is liable, and
(iii) any written demand made on the corporation for an amount in excess of $5000 that, if not met, may result in an action being brought against the corporation;

(c) the particulars of or a copy of any subsisting management agreement;
(d) the particulars of or a copy of any subsisting recreational agreement;
(e) a copy of the budget, if any, of the corporation;
(f) a copy of the financial statement, if any, of the corporation;
(g) a copy of the by-laws of the corporation;
(h) a copy of any minutes of proceedings of a general meeting of the corporation or of the board.

RSA 1980 cC-22 s36

Documents, Specifications and Approvals

37(1) The owner of the land at the time a condominium plan is registered shall provide to the corporation without charge not later than 180 days from the day the condominium plan is registered the original or a copy of the following documents:

(a) all warranties and guarantees on the real and personal property of the corporation and the common property for which the corporation is responsible;

(b) the

(i) structural, electrical, mechanical and architectural working drawings and specifications, and
(ii) as built drawings,

that exist for the common property for which the corporation is responsible;

(c) the plans that exist showing the location of underground utility services, sewer pipes and cable television lines located on the common property;

(d) all written agreements that the corporation is a party to;

(e) all certificates, approvals and permits issued by a local authority, the Government or an agent of the Government that relate to any property for which the corporation is responsible.

(2) A corporation may at any time before it receives a document under subsection (1) make a written request to the owner of the land referred to in subsection (1) for a copy of that document and that

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person shall, within 20 days of receiving that request, provide to the corporation without charge a copy of that document if the document is in the possession of that person.

RSA 1980 cC-22 s37

Insurance

38(1) A corporation

(a) where a building is divided into units, shall place and maintain insurance on the units, other than improvements made to the units by the owners, and the common property against loss resulting from destruction or damage caused by fire and those other perils specified in the by-laws,

(a.1) where a parcel is divided into bare land units, shall place and maintain insurance on the common property against loss resulting from destruction or damage caused by fire and those other perils specified in the by-laws,

(b) shall, if required to do so by by-law, place and maintain insurance on the improvements made to the units by the owners against loss resulting from destruction or damage caused by fire and those other perils specified in the by-laws, and

(c) may place and maintain insurance on the units and the common property or either of them against additional perils other than those specified in the Act or the by-laws,

and for that purpose the corporation has an insurable interest in the units and the common property.

(2) In complying with subsection (1), the corporation must place insurance that provides that if

(a) the insured property is destroyed or damaged, and

(b) that property is replaced or repaired,

no deduction shall be made from the settlement for depreciation to the property.

(3) If a corporation places insurance under subsection (1)(c), it may continue that insurance unless it is prohibited from doing so by a resolution passed at a properly convened meeting of the corporation.

(4) Any payment by an insurer under a policy of insurance for the destruction of or damage to a unit or the common property shall, notwithstanding the terms of the policy,

(a) be paid to the insurance trustee designated in the by-laws or, if the by-laws do not designate an insurance trustee, to the corporation, and

(b) be used forthwith, subject to sections 50, 51 and 52, for the repair or replacement of the insured property that was destroyed or damaged.

(5) Notwithstanding the Insurance Act or any policy of insurance, if insurance is placed by a corporation and an owner against the loss
resulting from destruction of or damage to the units or the common property,

(a) the insurance placed by the corporation is deemed to be first loss insurance, and

(b) the insurance placed by the owner of a unit in respect of the same property that is insured by the corporation is deemed to be excess insurance.

RSA 1980 cC-22 s38, 1983 c71 ss13

39. On a written request of an owner, purchaser or mortgagee of a unit the corporation shall, within 20 days of receiving that request, provide to the person making the request copies of the policies of insurance placed by the corporation.

RSA 1980 cC-22 s39

Dispositions of Common Property

40(1) By a unanimous resolution a corporation may be directed to transfer or lease the common property, or any part of it.

(2) When the board is satisfied that the unanimous resolution was properly passed and that all persons having registered interests in the parcel and all other persons having interests, other than statutory interests, notified to the corporation

(a) have, in the case of either a transfer or a lease, consented in writing to the release of those interests in respect of the land comprised in the proposed transfer, or

(b) have, in the case of a lease, approved in writing of the execution of the proposed lease,

the corporation shall execute the appropriate transfer or lease.

(3) A transfer or lease executed in accordance with subsection (2) is valid and effective without execution by any person having an interest in the common property and the receipt of the corporation for the purchase money, rent, premiums or other money payable to the corporation under the terms of the transfer or lease is a sufficient discharge of and exonerates the persons taking under the transfer or the lease from any responsibility for the application of the money expressed to have been so received.

(4) The Registrar shall not register a transfer or lease authorized under this section unless it has endorsed on it or is accompanied by a certificate under the seal of the corporation stating

(a) that the unanimous resolution was properly passed,

(b) that the transfer or lease conforms with the terms of it, and

(c) that all necessary consents were given.

(5) The certificate referred to in subsection (4) is,

(a) in favour of a purchaser or lessee of the common property, or part of it, and

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(b) in favour of the Registrar, conclusive proof of the facts stated in the certificate.

(6) On the filing for registration of a transfer of common property, the Registrar

(a) shall, before issuing a certificate of title, amend the condominium plan by deleting from it the common property comprised in the transfer, and

(b) shall register the transfer by issuing to the transferee a certificate of title for the land transferred, but no notification of the transfer shall be made on any other certificate of title in the register.

(7) On the filing for registration of a lease of common property, the Registrar shall register the lease by noting it on the condominium plan in the manner prescribed by the regulations.

RSA 1980 cC-22 s40

41 Notwithstanding section 40, a corporation may, if its by-laws permit it to do so, grant a lease to an owner of a residential unit permitting that owner to exercise exclusive possession in respect of an area or areas of the common property.

RSA 1980 cC-22 s41

42 By a unanimous resolution a corporation may be directed to accept on behalf of the owners a grant of easement or a restrictive covenant benefiting the parcel.

RSA 1980 cC-22 s42

43(1) By a unanimous resolution a corporation may be directed to execute on behalf of the owners a grant of easement or a restrictive covenant burdening the parcel.

(2) When the board is satisfied that the unanimous resolution was properly passed and that

(a) all persons having interests in the parcel, and

(b) all other persons having interests, other than statutory interests, that have been notified to the corporation,

have consented in writing to the release of those interests in respect of the land comprised in the proposed disposition, the corporation shall execute the appropriate instrument to grant the easement or covenant.

(3) An instrument granting an easement or covenant executed in accordance with subsection (2) is valid and effective without execution by any person having an interest in the parcel, and the receipt of the corporation is a sufficient discharge of and exonerates all persons taking under the instrument from any responsibility for the application of the money expressed to have been so received.

(4) The Registrar shall not register an instrument granting an easement or covenant authorized under this section unless it has endorsed on it or is accompanied by a certificate under the seal of the

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corporation stating that the unanimous resolution was properly passed and that all necessary consents were given.

(5) The certificate referred to in subsection (4) is,

(a) in favour of a person dealing with the corporation under this section, and

(b) in favour of the Registrar,

conclusive proof of the facts stated in the certificate.

(6) The Registrar shall register the instrument granting the easement or covenant by noting it on the condominium plan in the manner prescribed by the regulations.

Rental of Residential Units

44(1) An owner of a residential unit shall not rent his unit until he has given written notice to the corporation of his intention to rent the unit, setting forth

(a) the address at which he may be served with a notice given by the corporation under section 45 or an originating notice or order referred to in section 46 or 47, and

(b) the amount of rent to be charged for the unit.

(2) If an owner of a residential unit rents his unit it is a condition of that tenancy, notwithstanding anything in the tenancy agreement, that the persons residing in or on that unit shall not

(a) cause damage to the real or personal property of the corporation or the common property, or

(b) contravene the by-laws.

(3) The corporation may require an owner who rents his residential unit to pay to and maintain with the corporation a deposit that the corporation may use for

(a) the repair or replacement of the real and personal property of the corporation or of the common property, and

(b) the maintenance, repair or replacement of any common property that is subject to a lease granted to the owner of the unit under section 41,

that is damaged, destroyed, lost or removed, as the case may be, by a person residing in or on the rented unit.

(4) A deposit referred to in subsection (3) shall not exceed one month's rent charged for the unit.

(5) The owner of a residential unit shall give the corporation written notice of the name of the tenant residing in or on the unit within 20 days from the commencement of the tenancy.

(6) Within 20 days of ceasing to rent his residential unit, the owner shall give the corporation written notice that his unit is no longer rented.

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(7) A corporation shall, within 20 days of receiving a written notice under subsection (6),

(a) return the deposit to the owner,

(b) if the corporation has made use of the deposit for one or more of the purposes referred to under subsection (3), deliver to the owner

(i) a statement of account showing the amount used, and

(ii) the balance of the deposit not used, if any,

or

(c) if the corporation is entitled to make use of the deposit but is unable to determine the amount of the deposit that it will use, deliver to the owner an estimated statement of account showing the amount it intends to use and, within 60 days after delivering to the owner the estimated statement of account, deliver to the owner

(i) a final statement of account showing the amounts used, and

(ii) the balance of the deposit not used, if any.

RSA 1980 cC-22 s44; 1983 c71 s14

45(1) The corporation may give a tenant renting a residential unit a notice to give up possession of that unit, if a person residing in or on that unit

(a) causes damage, other than normal wear and tear, to the real or personal property of the corporation or to the common property, or

(b) contravenes a by-law.

(2) When the corporation gives a tenant a notice under subsection (1),

(a) the tenant shall give up possession of the residential unit, and

(b) notwithstanding the Landlord and Tenant Act or anything contained in the tenancy agreement between the tenant and his landlord, the tenancy agreement terminates,

on the last day of the month immediately following the month in which the notice is served on the tenant.

(3) A notice given under subsection (1) shall be served on the tenant and his landlord.

RSA 1980 cC-22 s45; 1983 c71 s15

46(1) If a tenant is given notice under section 45(1) and does not give up possession, the corporation or the landlord may apply by originating notice to the Court for an order requiring the tenant to give up possession of the residential unit.

(2) An originating notice under this section shall be served on the tenant and his landlord not less than 3 days, exclusive of holidays.
and Saturdays, before the day named in the notice for the hearing of the application.

(3) The application of the corporation shall be supported by an affidavit

(a) establishing service of the notice under section 45 to give up possession,
(b) stating the reasons for giving the tenant a notice to give up possession,
(c) stating the failure of the tenant to give up possession and the reasons given, if any, for that failure, and
(d) stating any other relevant facts.

(4) On hearing the application the Court may order the tenant to give up possession of the residential unit by a date specified in the order and make any other order that it considers proper in the circumstances.

(5) If the corporation is granted an order under subsection (4), it shall serve a copy of that order on the landlord.

RSA 1980 cC-22 s46

Application for order to give up possession

47(1) If a person residing in or on a residential unit that is being rented

(a) has caused or is causing excessive damage to the real or personal property of the corporation or to the common property, or
(b) is a danger to or is intimidating persons who are residing in or on the other residential units located on the parcel,

the corporation may, notwithstanding that the tenant renting that residential unit has or has not been given a notice to give up possession of that residential unit under section 45 or by the landlord under the tenancy agreement, apply by originating notice to the Court for an order requiring the tenant to give up immediate possession of that residential unit.

(2) An originating notice under this section shall be served on the tenant and his landlord not less than 3 days, exclusive of holidays and Saturdays, before the day named in the notice for the hearing of the application.

(3) The application of the corporation shall be supported by an affidavit

(a) setting forth

(i) the damage to the real or personal property of the corporation or the common property, and
(ii) the nature of the danger to or intimidation of persons residing in or on the other residential units,

or either of them, and

(b) stating any other relevant facts.
(4) On hearing the application, the Court may make an order
(a) requiring the tenant to give up possession of the residential unit, if the Court is satisfied that
(i) a person residing in or on that residential unit has caused or is causing excessive damage to the real or personal property of the corporation or the common property or is a danger to or is intimidating persons residing in or on the other units, and
(ii) there are reasonable and probable grounds to believe that further damage may be done or that the danger or intimidation will not cease if the tenant is allowed to remain in possession of the rented unit, and
(b) fixing the day on which the tenant is required to give up possession of the rented unit,
and make any other order that it considers proper in the circumstances.

(5) The tenancy agreement between the tenant and the landlord terminates on the day that the tenant is required to give up possession of the unit pursuant to an order made under subsection (4).

(6) The corporation shall serve a copy of an order made under subsection (4) on the landlord.

48(1) A corporation shall not
(a) impose or collect deposits under section 44,
(b) give notices to give up possession of residential units under section 45, or
(c) make applications to the Court under section 46 or 47, unless it is authorized by by-law to do so.

(2) A by-law referred to in subsection (1) may be general or specific in its application.

49(1) A corporation or a person having an interest in a unit may apply to the Court for appointment of an administrator.

(2) The Court may, on cause shown, appoint an administrator for an indefinite period or for a fixed period on any terms and conditions as to remuneration or otherwise that it thinks fit.

(3) The remuneration and expenses of an administrator appointed under this section are administrative expenses within the meaning of this Act.
(4) An administrator has, to the exclusion of the board and the corporation, those powers and duties of the corporation that the Court orders.

(5) An administrator may delegate any of the powers or duties so vested in him.

(6) The Court may, on the application of an administrator or a person referred to in subsection (1), remove or replace the administrator.

RSA 1980 cC-22 s49

Damage to Building

50(1) If a building that is designated as a unit or part of a unit or that is divided into units is damaged but the condominium status is not terminated pursuant to section 51 or 52, an application to settle a scheme may be made to the Court by the corporation, an owner, a registered mortgagee of a unit or a vendor under an agreement for sale of a unit.

(2) On an application under this section the Court may by order settle a scheme including provisions

(a) for the reinstatement in whole or in part of the building, or

(b) for transfer of the interests of owners of units that have been wholly or partially destroyed to the other owners in proportion to their unit factors.

(3) In the exercise of its powers under subsection (2), the Court may make those orders as it considers necessary or expedient for giving effect to the scheme, including orders

(a) directing the application of insurance money received by the corporation in respect of damage to the building,

(b) directing payment of money by the corporation or by the owners or by some one or more of them,

(c) directing an amendment of the condominium plan as the Court thinks fit, so as to include in the common property any accretion to it, and

(d) imposing any terms and conditions it thinks fit.

(4) On an application to the Court under this section an insurer who has effected insurance on the building or any part of it, being insurance against destruction of units or damage to the building, has the right to appear in person or by agent or counsel.

RSA 1980 cC-22 s50; 1983 c71 s17

Termination of Condominium

51 The condominium status of a building or parcel may be terminated by a unanimous resolution.

RSA 1980 cC-22 s51; 1983 c71 s18

52(1) An application to terminate the condominium status of a building or parcel may be made to the Court by the corporation, an owner, a registered mortgagee of a unit or a vendor under an agreement for sale of a unit.
(2) On an application under this section, if the Court is satisfied that, having regard to the rights and interests of the owners as a whole, it is just and equitable that the condominium status of the building or parcel should be terminated, the Court may make a declaration to that effect.

(3) When a declaration has been made pursuant to subsection (2), the Court may by order impose any conditions and give any directions, including directions for the payment of money, that it thinks fit for the purpose of adjusting as between the corporation and the owners and as amongst the owners themselves the effect of the declaration.

(4) On an application to the Court under this section an insurer who has effected insurance on the building or a part of it, being insurance against destruction of units or damage to the building, has the right to appear in person or by agent or counsel.

RSA 1980 cC-22 s52; 1983 c71 s19

53(1) On the condominium status of the building or parcel being terminated under section 51 or 52, the corporation shall forthwith file with the Registrar a notice of the termination in the prescribed form.

(2) On receipt of the notice referred to in subsection (1), the Registrar shall make a notification in respect of the notice on the condominium plan in the manner prescribed by the regulations and on the notification being made, the owners of the units in the plan are entitled to the parcel as tenants in common in shares proportional to the unit factors of their respective units.

RSA 1980 cC-22 s53; 1983 c71 s20

54(1) When the condominium status of a building or parcel is being terminated the corporation may be directed, by a unanimous resolution, to transfer the parcel or any part of it.

(2) When the board is satisfied that the unanimous resolution was properly passed and that

(a) all persons having registered interests in the parcel, and

(b) all other persons having interests, other than statutory interests, that have been notified to the corporation,

have consented in writing to the release of the interests in respect of the land comprised in the proposed disposition, the corporation shall execute the appropriate transfer.

(3) A transfer executed pursuant to subsection (2) is valid and effective without execution by any person having an interest in the parcel and the receipt of the corporation is sufficient discharge of and exonerates the person taking under the transfer from any responsibility for the application of the money expressed to have been so received.

(4) The Registrar shall not register a transfer executed pursuant to this section

(a) unless the transfer has endorsed on it or is accompanied by a certificate under the seal of the corporation that the unanimous
(2) On an application under this section, if the Court is satisfied that, having regard to the rights and interests of the owners as a whole, it is just and equitable that the condominium status of the building or parcel should be terminated, the Court may make a declaration to that effect.

(3) When a declaration has been made pursuant to subsection (2), the Court may by order impose any conditions and give any directions, including directions for the payment of money, that it thinks fit for the purpose of adjusting as between the corporation and the owners and as amongst the owners themselves the effect of the declaration.

(4) On an application to the Court under this section an insurer who has effected insurance on the building or a part of it, being insurance against destruction of units or damage to the building, has the right to appear in person or by agent or counsel.

RSA 1980 cC-22 s52; 1983 c71 s19

53(1) On the condominium status of the building or parcel being terminated under section 51 or 52, the corporation shall forthwith file with the Registrar a notice of the termination in the prescribed form.

(2) On receipt of the notice referred to in subsection (1), the Registrar shall make a notification in respect of the notice on the condominium plan in the manner prescribed by the regulations and on the notification being made, the owners of the units in the plan are entitled to the parcel as tenants in common in shares proportional to the unit factors of their respective units.

RSA 1980 cC-22 s53; 1983 c71 s20

54(1) When the condominium status of a building or parcel is being terminated the corporation may be directed, by a unanimous resolution, to transfer the parcel or any part of it.

(2) When the board is satisfied that the unanimous resolution was properly passed and that

(a) all persons having registered interests in the parcel, and

(b) all other persons having interests, other than statutory interests, that have been notified to the corporation,

have consented in writing to the release of the interests in respect of the land comprised in the proposed disposition, the corporation shall execute the appropriate transfer.

(3) A transfer executed pursuant to subsection (2) is valid and effective without execution by any person having an interest in the parcel and the receipt of the corporation is sufficient discharge of and exonerates the person taking under the transfer from any responsibility for the application of the money expressed to have been so received.

(4) The Registrar shall not register a transfer executed pursuant to this section

(a) unless the transfer has endorsed on it or is accompanied by a certificate under the seal of the corporation that the unanimous
resolution was properly passed and that all necessary consents were given, and

(b) until the notification required by section 53 has been made on the condominium plan.

(5) A certificate made pursuant to subsection (4) is,

(a) in favour of a purchaser of the parcel, and

(b) in favour of the Registrar,

conclusive proof of the facts stated in the certificate.

(6) When land is transferred by a corporation pursuant to this section, the Registrar

(a) shall cancel the certificates of title relating to the units, and

(b) shall register the transfer and issue to the transferee a certificate of title for the land transferred,

whether or not he is in possession of the duplicate certificates of title for the units.

RSA 1980 cC-22 s54; 1983 c71 s21

Dissolution of Corporation

55(1) The Court on an application by a corporation, a member of the corporation, or an administrator appointed under section 49 may by order provide for the winding up of the affairs of a corporation.

(2) By the same or subsequent order the Court may declare the corporation dissolved on a date specified in the order.

RSA 1980 cC-22 s55

Assessment and Taxation

56 In this section and sections 57 to 59,

(a) “assessing Act” means an Act pursuant to which an assessing authority is empowered to assess and levy rates, charges or taxes on land or in respect of the ownership of land and includes a by-law or regulation made pursuant to that Act;

(b) “assessing authority” means a local authority, school board or other authority having power to assess and levy rates, charges or taxes on land or in respect of the ownership of land.

RSA 1980 cC-22 s56

57(1) A corporation shall, within 28 days after the registration of a condominium plan or an amendment to it, furnish to the assessing authority 2 copies of the condominium plan or amendment to it, including all endorsements on it, certified as prescribed by the regulations.

(2) For all purposes in relation to the making, levying, imposition, assessment or recovery of rates, charges or taxes in relation to the parcel or a part of it
(a) the particulars shown on the certified copy of the condominium plan or any amendment to it furnished pursuant to subsection (1) are conclusive proof of those particulars, and

(b) the production by an assessing authority of what purports to be a certified copy of a condominium plan or an amendment to it furnished pursuant to subsection (1) is prima facie proof that it is the certified copy so furnished.

RSA 1980 c-22 s57

58 For the purpose of assessment and taxation by an assessing authority,

(a) each unit and the share in the common property appurtenant to it constitutes a separate parcel of land and improvements, and

(b) the common property does not constitute a separate parcel of land or improvements,

and the provisions of an assessing Act or another Act authorizing or affecting

(c) the assessment or valuation of land and improvements by an assessing authority,

(d) the imposition of rates, charges or taxes by an assessing authority in respect of land and improvements for municipal, school, hospital or other purposes authorized by law, or

(e) the collection and recovery of rates, charges or taxes by an assessing authority by proceedings against an assessed owner and his property or the land and improvements against which the rates, charges or taxes are charged,

apply with all necessary modifications to each unit and the share in the common property appurtenant to it.

RSA 1980 c-22 s58

59 The corporation is not liable in relation to the parcel for any rate, charge or tax levied by an assessing authority.

RSA 1980 c-22 s59

Miscellaneous

60(1) Unless otherwise provided for in this Act or the regulations, an application to the Court under this Act shall be by petition.

(2) On an application, notice shall be served on the persons the Court directs.

(3) Notwithstanding subsection (2), the Court may dispense with notice.

(4) The Court may direct the trial of an issue and may give any directions as to all matters, including filing of pleadings, that appear necessary and proper for the final hearing of the application.

RSA 1980 c-22 s60

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61 The Court may from time to time vary any order made by it under this Act.

RSA 1980 cC-22 s61

62 When a local authority, public authority or person authorized by either of them has a statutory right to enter on any part of a parcel, the authority or person is entitled to enter on any other part of the parcel to the extent necessary or expedient to enable it or him to exercise its or his statutory powers.

RSA 1980 cC-22 s62

63(1) A document including any written notice or request may be served on a corporation

(a) by leaving it at or by sending it by registered mail

(i) if a change of address for service has not been filed under section 65(2), to the address shown on the condominium plan, or

(ii) if a change of address for service has been filed under section 65(2), to the address for service shown on the latest notice filed,

or

(b) by personal service on a member of the board.

(2) For the purposes of this section “document” includes summons, notice, tax notice, order and other legal process.

RSA 1980 cC-22 s63

64(1) A corporation may serve on a landlord a notice given under section 45 or an originating notice or order referred to in section 46 or 47

(a) by personal service, or

(b) by registered mail sent to the address given to the corporation under section 44.

(2) A corporation may serve on a tenant a notice given under section 45 or an originating notice or order referred to in section 46 or 47

(a) by personal service, or

(b) if the tenant cannot be served personally by reason of his absence from the premises or by reason of his evading service,

(i) by giving it to an adult person who apparently resides with the tenant,

(ii) by posting it up in a conspicuous place on some part of the premises, or

(iii) by sending it by registered mail to the tenant at the address where he resides.

RSA 1980 cC-22 s64
65(1) A corporation may by resolution of the board change its address for service.

(2) A change in the address for service under subsection (1) does not take effect until a notice of that change of address is filed in the prescribed form at the land titles office.

66 The corporation may charge a reasonable fee to compensate it for the expenses it incurs in producing and providing a document required under this Act.

67 For the purposes of the Dower Act, one unit, together with the owner's share in the common property, constitutes a homestead.

68 For the purposes of section 1(k) of the Exemptions Act a unit together with the owner's share in the common property is deemed to be a house and lot.

69 If a judgment is obtained against a corporation, a writ of execution in respect of it may be registered against the condominium plan.

70 For the purposes of the Builders' Lien Act,

(a) if on the request of the owner of a unit

(i) work is done in or on or in respect of that unit, or

(ii) material is furnished to be used in or on that unit,

any lien that arises under that Act in consequence of it is on the estate of the owner in that unit and his share in the common property;

(b) if on the request of a corporation

(i) work is done in or on or in respect of the common property or a unit or both, or

(ii) material is furnished to be used in or on the common property or a unit or both intended for the benefit of the common property generally, any lien that arises under that Act in consequence of it is on the estates of all the owners in all the units and the common property;

(c) if on the request of a corporation

(i) work is done in or on or in respect of any unit, or

(ii) material is furnished to be used in or on any unit, intended for the benefit of that unit, any lien that arises under that Act in consequence of it is on the estate of the owner in that unit and his share in the common property.
71(1) A person who fails to comply with section 9(1) or (5), 10 or 16 is guilty of an offence and liable to a fine of not more than $2000.

(2) Subject to subsection (1), a person who fails to comply with this Act is guilty of an offence and liable to a fine of not more than $500.

(3) If a corporation fails to comply with this Act, each member of the board who is knowingly a party to that failure is guilty of an offence and liable to a fine of not more than $500.

72(1) This Act applies notwithstanding any agreement to the contrary and any waiver or release given of the rights, benefits or protections provided by or under sections 9 to 14 is void.

(2) A remedy that a purchaser of a residential unit has under this Act is in addition to any other rights or remedies that he has.

(3) A purchase agreement may be enforced by a purchaser notwithstanding that the developer failed to comply with this Act.

73 The Lieutenant Governor in Council may make regulations

(a) in respect of forms to be used for the purposes of this Act, including the form of certificates of title to units;

(b) respecting the manner of registering a condominium plan;

(c) prescribing the fees to be paid for any procedure or function required or permitted to be done under this Act;

(d) respecting the practice and procedure governing application to the Court under this Act;

(e) concerning all matters that by this Act are required or permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.
APPENDIX 1
(Section 27)

BY-LAWS OF THE CORPORATION

1(1) In these by-laws.
(a) "Act" means the Condominium Property Act;
(b) "annual general meeting" means an annual general meeting of the corporation;
(c) "general meeting" means a general meeting of the corporation.

(2) Expressions defined in section 1 of the Act have the same meaning in these by-laws.

(3) The rights and obligations given or imposed on the corporation or the owners under these by-laws are in addition to any rights or obligations given or imposed on the corporation or the owners under the Act.

(4) If there is any conflict between these by-laws and the Act, the Act prevails.

Duties of the Owner

2 An owner
(a) shall permit the corporation and its agents, at all reasonable times on notice (except in case of emergency when no notice is required), to enter in or on his unit for the purpose of
(i) inspecting the unit,
(ii) maintaining, repairing or replacing pipes, wires, cables and ducts existing in or on the unit and used or capable of being used in connection with the enjoyment of any other unit or common property,
(iii) maintaining, repairing or replacing common property, or
(iv) ensuring that the by-laws are being observed,
(b) shall forthwith
(i) carry out all work that may be required pursuant to these by-laws or as required by a local authority or other public authority in respect of his unit, other than any work for the benefit of the building or parcel generally, and
(ii) pay all rates, taxes, charges and assessments that may be payable in respect of his unit,
(c) shall maintain his unit in a state of good repair,
(d) shall notify the corporation forthwith of
(i) any change in the ownership of the unit, or
(ii) any mortgage registered against the unit,

and

(e) shall not make structural, mechanical or electrical alterations to his unit or to the common property without the prior written consent of the board, which shall not be unreasonably withheld.

Powers of the Corporation

3 The corporation may

(a) acquire personal property to be used

(i) for the maintenance, repair or replacement of the real or personal property of the corporation or the common property, or

(ii) by owners in connection with their enjoyment of the real and personal property of the corporation or the common property,

(b) borrow money required by it in the performance of its duties or the exercise of its powers,

(c) secure the repayment of money borrowed by it and interest on that money by negotiable instrument, a mortgage of unpaid contributions (whether levied or not), or a mortgage of any property owned by it or by any combination of those means,

(d) grant a lease to an owner under section 41 of the Act,

(e) charge interest under section 32 of the Act on any contribution owing to it by an owner, and

(f) make an agreement with an owner or tenant of a unit for the provision of amenities or services by it to the unit or to the owner or tenant of the unit.

Election of the Board

4(1) The board shall consist of not less than 3 and not more than 7 individuals.

(2) Notwithstanding subsection (1), if there are not more than 2 owners, the board may consist of one or more individuals not to exceed 7 in number.

(3) An individual shall not be a member of the board unless that individual is 18 years of age or older.

Eligibility to Sit on the Board

5(1) A person does not need to be an owner in order to be elected to the board.

(2) Notwithstanding subsection (1),

(a) if a unit has more than one owner, only one owner in respect of that unit may sit on the board at one time, and

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(b) an owner who has not paid to the corporation the contribu-
tions due and owing in respect of his unit is not eligible for
election to the board.

**Voting**

6 At an election of members of the board each person entitled to
vote may vote for the same number of nominees as there are vacan-
cies to be filled on the board.

**Term of Office**

7(1) Subject to subsection (2), a member of the board shall be elected
at an annual general meeting for a term expiring at the conclusion of
the annual general meeting convened in the 2nd year following the
year in which he was elected to the board.

(2) At the first general meeting convened under section 24 of the Act

(a) not more than 50% of the members of the board shall be
elected for a term expiring at the conclusion of the annual general
meeting convened in the year following the year in which they
were elected, and

(b) the balance of the members shall be elected for a term expir-
ing at the conclusion of the annual general meeting convened in
the 2nd year following the year in which they were elected.

(3) Each member of the board shall remain in office until

(a) the office becomes vacant under section 9 of these by-laws,

(b) the member resigns,

(c) the member is removed under section 8 of these by-laws, or

(d) his term of office expires,

whichever comes first.

**Removal of a Member of the Board**

8 Except when the board consists of less than 3 individuals, the
corporation may by resolution at a general meeting remove a mem-
ber of the board before the expiration of his term of office and ap-
point another individual in his place to hold that office for the re-
mainder of the term.

**Vacating of the Office of a Member of the Board**

9 The office of a member of the board is vacated if he

(a) becomes bankrupt under the Bankruptcy Act (Canada),

(b) is more than 30 days in arrears in payment of any contribu-
tion required to be made by him as an owner,
(c) is the subject of a certificate of incapacity issued under the Dependent Adults Act.

(d) is convicted of an indictable offence for which he is liable to imprisonment for a term of not less than 2 years.

(e) resigns his office by serving notice in writing on the corporation, or

(f) is absent from 3 consecutive meetings of the board without permission of the board and it is resolved at a subsequent meeting of the board that his office be vacated.

Vacancy

10 When a vacancy occurs on the board under section 9 of these by-laws, the board may appoint an individual to fill that office for the remainder of the former member's term.

Officers of the Corporation

11(1) At the first meeting of the members of the board held after the general meeting of the corporation at which they were elected, the board shall designate from its members a president, vice-president, secretary and treasurer of the corporation.

(2) Notwithstanding subsection (1), the board may designate one person to fill the offices of secretary and treasurer.

(3) In addition to those duties assigned to the officers by the board,

(a) the president or, in the event of his absence or disability, the vice-president,

(i) is responsible for the daily execution of the business of the corporation, and

(ii) shall act as chairman of the meetings of the board;

(b) the secretary or, in the event of his absence or disability, another member of the board designated by the board,

(i) shall record and maintain all the minutes of the board,

(ii) is responsible for all the correspondence of the corporation, and

(iii) shall carry out his duties under the direction of the president and the board;

(c) the treasurer or, in the event of his absence or disability, another member of the board designated by the board, shall

(i) receive all money paid to the corporation and deposit it as the board may direct,

(ii) properly account for the funds of the corporation and keep those books as the board directs,

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(iii) present to the board when directed to do so by the board, a full detailed account of receipts and disbursements of the corporation, and
(iv) prepare for submission at the annual general meeting
   (A) a budget for the forthcoming fiscal year of the corporation, and
   (B) an audited statement for the most recently completed fiscal year of the corporation.

(4) A person ceases to be an officer of the corporation if he ceases to be a member of the board.

(5) If a person ceases to be an officer of the corporation, the board shall designate from its members a person to fill that office for the remainder of the term.

(6) If a board consists of not more than 3 persons, those persons may perform the duties of the officers of the corporation in such manner as the board may direct.

**Majority Vote and Quorum of the Board**

12(1) At meetings of the board, all matters shall be determined by majority vote and in the event of a tie vote, the chairman is entitled to a casting vote in addition to his original vote.

(2) A quorum for a meeting of the board is a majority of the members of the board.

**Written Resolutions**

13 A written resolution of the board signed by all of the members of the board has the same effect as a resolution passed at a meeting of the board duly convened and held.

**Seal of the Corporation**

14(1) The corporation shall have a corporate seal that shall not be used except:

   (a) under the authority of a resolution of the board given prior to its use, and

   (b) in the presence of not less than 2 members of the board who shall sign the instrument to which the seal is affixed.

(2) Notwithstanding subsection (1), if there are not more than 2 members of the corporation, one member may be authorized by the board to use the corporate seal and sign the instrument to which the seal is affixed.

**Signing Authority**

15 The board shall prescribe, by resolution,

   (a) those officers or other persons who are authorized to sign cheques, drafts, instruments and documents not required to be signed under the corporate seal, and

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(b) the manner, if any, in which those cheques, drafts, instruments or other documents are to be signed.

Powers of the Board

16(1) The board shall

(a) meet at the call of the president to conduct its business and adjourn and otherwise regulate its meetings as it thinks fit, and

(b) meet when a member of the board gives to the other members not less than 7 days' notice of a meeting proposed by him, specifying the reason for calling the meeting.

(2) The board may employ on behalf of the corporation any agents and employees it thinks necessary to control, manage and administer the real and personal property of the corporation and the common property and in that respect may authorize those persons to exercise the powers of and carry out the duties of the corporation.

(3) The board may, subject to any restriction imposed on it or direction given to it at a general meeting of the corporation, delegate to any of its members or to other persons any or all of its powers and duties as it thinks fit, and may at any time revoke that delegation.

Duties of the Board

17 The board shall

(a) cause proper books of account to be kept in respect of all money received and expended by it and the matters in respect of which the receipt and expenditure take place;

(b) prepare financial statements relating to all money of the corporation, and the income and expenditures of the corporation, for each annual general meeting;

(c) maintain financial records of all the assets, liabilities and equity of the corporation;

(d) submit to the annual general meeting an annual report consisting of the financial statements and other information as the board may determine or as may be directed by a resolution passed at a general meeting.

Procedure

18 All meetings of the board and general meetings shall be conducted according to the rules of procedure adopted by the board.

General Meetings other than an Annual General Meeting

19 The board

(a) shall, on the written request of the owners entitled to vote and who represent not less than 15% of the total unit factors for the units, convene a general meeting, and
(b) may, whenever it considers it proper to do so, convene a general meeting.

**Notice of General Meetings**

20(1) When an annual general meeting or a general meeting is to be convened, the board shall, not less than 7 days prior to the day on which the meeting is to be convened, give to each owner written notice of the meeting stating:

(a) the place, date and time at which the meeting is to be convened, and

(b) the nature of any special business, if any, to be brought forth at the meeting.

(2) On being notified by a mortgagee entitled to vote under section 21 of the Act that it wishes to be notified of general meetings, the board shall give to that mortgagee the same notices required to be given to the owner under subsection (1) of this section.

(3) An annual general meeting or a general meeting or anything done at that meeting is not invalid by reason only that

(a) a person, by accident, was not, in respect of that meeting, given a notice under subsection (1), or

(b) a person did not in fact receive a notice given under subsection (1) in respect of that meeting.

**Quorum**

21(1) Except as otherwise provided by these by-laws, no business shall be transacted at an annual general meeting or a general meeting unless a quorum of persons entitled to vote is present or represented by proxy, at the time when the meeting commences.

(2) A quorum for an annual general meeting or a general meeting consists of not less than 25% of all the persons entitled to receive notice under section 20 of these by-laws being present in person or represented by proxy at that meeting.

(3) If within 30 minutes from the time appointed for the commencement of an annual general meeting or a general meeting a quorum is not present, the meeting shall stand adjourned to the corresponding day in the next week at the same place and time and if at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the commencement of the meeting, the persons entitled to vote who are present or represented by proxy constitute a quorum for the purpose of that meeting.

22(1) The president or, in the event of his absence or disability, the vice-president or other person elected at the meeting, shall act as chairman of an annual general meeting or a general meeting.

(2) The order of business at an annual general meeting and, as far as practicable at any other general meeting, shall be as follows:

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(a) call to order by the chairman;
(b) calling of the roll and certifying of proxies;
(c) proof of notice of meeting, waiver or proxies, as the case may be;
(d) reading and disposal of any unapproved minutes;
(e) reports of officers;
(f) reports of committees;
(g) election of members of the board;
(h) unfinished business;
(i) new business;
(j) adjournment.

**Show of Hands**

23(1) At an annual general meeting or a general meeting, a resolution shall be voted on by a show of hands unless a poll is demanded by a person entitled to vote and present in person or by proxy, and unless a poll is so demanded, a declaration by the chairman that a resolution has on the show of hands been carried is conclusive proof of the fact without proof of the number or proportion of votes recorded in favour of or against the resolution.

(2) If a person demands a poll, that person may withdraw that demand and on the demand being withdrawn the vote shall be taken by a show of hands.

**Taking of Poll**

24 A poll, if demanded, shall be conducted in a manner as directed by the chairman, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

**Tie Vote**

25 In the case of a tie in a vote taken at an annual general meeting or a general meeting, whether on a show of hands or on a poll, the chairman of the meeting is entitled to a casting vote in addition to his original vote.

**Number of Votes**

26(1) If a vote is taken by a show of hands, each person entitled to vote has one vote.

(2) If a vote is taken by a poll, the number of votes that a person may cast shall correspond to the unit factors for the respective units represented by that person.

**Votes at an Annual General Meeting or a General Meeting**

27 Except for matters requiring a special resolution or unanimous resolution, all matters shall be determined by a majority vote.
Manner of Voting

28 On a show of hands or on a poll, votes may be given either personally or by proxy.

Appointment of Proxy

29 An instrument appointing a proxy shall be in writing under the hand of the person making the appointment or his attorney, and may be either general or for a particular meeting, but a proxy need not be an owner.

Restrictions on Voting

30(1) Except as provided for in subsection (2) of this section or section 21 of the Act, there are no restrictions or limitations on an owner's rights to vote at an annual general meeting or a general meeting.

(2) If, at the time of an annual general meeting or a general meeting, an owner has not paid to the corporation all contributions that are due and owing in respect of his unit, that owner is ineligible to cast a vote at that meeting in respect of any resolution other than a special resolution or a unanimous resolution.

(3) An owner's ineligibility to cast a vote does not affect the right of the mortgagee first entitled in priority in respect of a mortgage registered against the title of that owner's unit to vote in accordance with the Act.

Vote by Co-owners

31(1) If a unit is owned by more than one person, those co-owners may vote personally or by proxy and

(a) in the case of a vote taken by a show of hands, those co-owners are entitled to one vote between them, and

(b) in the case of a vote taken by a poll, a co-owner is entitled to that portion of the vote applicable to the unit as is proportionate to his interest in the unit.

(2) A co-owner may demand that a poll be taken.

Signed Resolution — Majority Vote

32 If a resolution of the members of the corporation requires a majority vote, that resolution signed in person or by proxy by all the persons who, at a properly convened annual general meeting or general meeting, would be entitled to vote, has the same effect as a resolution duly passed at the meeting.

Capital Replacement Reserve Fund

33(1) The board shall establish and maintain a fund called a "Capital Replacement Reserve Fund" to be used for the repair or replacement of

(a) any real and personal property owned by the corporation, and
(b) the common property,
when the repair or replacement does not occur annually.

(2) The board may by resolution determine the minimum amount
that may be paid from the Capital Replacement Reserve Fund in
respect of a single expenditure.

Failure to Comply with By-laws

34 The board may exercise the powers provided for in section 29
of the Act.

Tenants

35 The corporation is authorized to

(a) impose and collect deposits under section 44 of the Act,
(b) give notices to give up possession of residential units under
section 45 of the Act, and
(c) make applications to the Court under sections 46 and 47 of
the Act.

Amendment of By-laws

36 Notwithstanding section 20 of these by-laws, if a by-law is to
be amended, repealed or replaced, the persons entitled to vote shall
be given written copies of the text of the proposed amendment, re­
peal or replacement not less than 14 days prior to the day on which
the special resolution is to be voted on.

Restrictions in Use

37(1) In this section,

(a) "occupant" means a person present in or on a unit or in or
on the real or personal property of the corporation or the com-
mon property with the permission of an owner;
(b) "owner" includes a tenant.

(2) An owner shall not

(a) use or enjoy the real or personal property of the corporation
or the common property in such a manner as to unreasonably
interfere with its use and enjoyment by other owners or the oc­
cupants;
(b) use his unit in a manner or for a purpose that will cause a
nuisance or hazard to any other owner or occupant;
(c) use his unit for a purpose that is illegal;
(d) make undue noise in or on his unit or on or about real prop­
erty of the corporation or the common property;
(e) keep an animal in or on his unit or on the real property of the corporation or the common property after a date specified in a notice given to him by the board;

(f) in the case of a residential unit, use his unit for a purpose other than for residential purposes;

(g) do anything in respect of his unit, the real or personal property of the corporation or the common property or bring or keep anything on it that will in any way increase the risk of fire or result in an increase of any insurance premiums payable by the corporation;

(h) use a toilet, sink, tub, drain or other plumbing fixture for a purpose other than that for which it is constructed;

(i) hang or place on the real property of the corporation or the common property or within or on a unit anything that is, in the opinion of the board, aesthetically unpleasing when viewed from outside the units;

(j) leave articles belonging to his household on the real property of the corporation or the common property when those articles are not in actual use;

(k) obstruct a sidewalk, walkway, passage, driveway or parking area other than for ingress and egress to and from his unit;

(l) use any portion of the real property of the corporation or the common property except in accordance with the by-laws.

(3) An owner shall ensure that his occupants comply with those requirements that the owner must comply with under subsection (2).

RSA 1980 cC-22 App. 1; 1983 c71 s23
CONDOMINIUM ACT

[Repeal of s. 114 not in force; see s. 133]

[See sheet following this Act re amendment enacted 1985-20-18
(effective October 1, 1985 for some purposes and in full effect January 1, 1987)]

CHAPTER 61

[Consolidated April 2, 1986.]

[Act, except all matters affecting powers and duties of Registrar of Titles,
administered by the Ministry of Consumer and Corporate Affairs;
all matters affecting powers and duties of Registrar of Titles
administered by the Ministry of Attorney General]

Interpretation

1. (1) In this Act

"approving officer" means approving officer as defined in the Land Title Act;
"bare land strata plan" means a strata plan on which the boundaries of the strata lots are
defined on a horizontal plane by reference to survey markers under section 6 (2) (b),
and not by reference to the floors, walls and ceilings of a building;
"building" means a building, or a group of buildings, shown on a strata plan;
"bylaws" mean the bylaws of a strata corporation in force under this Act as amended by
the strata corporation;
"charge" means a registered interest less than fee simple and a registered encumbrance
on land;
"common facility" means a facility that is available for the use of all the owners, and,
without limiting the generality of the foregoing, may include a laundry room,
playground, swimming pool, recreation centre, clubhouse or tennis court;
"common property" means so much of the land and buildings comprised in a strata plan
that is not comprised in a strata lot shown on the strata plan, and includes pipes,
wires, cables, chutes, ducts or other facilities for the passage or provision of water,
sewage, drainage, gas, oil, electricity, telephone, radio, television services, garbage,
heating and cooling systems and other services contained within a floor, wall
or ceiling of a building shown on the strata plan, where the centre of the floor, wall or
ceiling forms the common boundary of a strata lot with another strata lot or with
common property;
"contingency reserve fund" means a fund for the expenditures, other than annual, of the
strata corporation for repair, maintenance and replacement of the common property,
common facilities and other assets of the strata corporation, including where
applicable, without limiting the generality of the foregoing, the roof, exterior of the
buildings, roads, sidewalks, sewers, heating, electrical and plumbing systems,
elevators, laundry and recreational facilities;
"limited common property" means common property designated under section 53 (1) and (2) for the use of one or more strata lot owners;
"minister" includes a person designated in writing by the minister;
"owner" means the person registered in the register of a land title office as owner in fee simple of a strata lot, whether entitled to it in his own right or in a representative capacity or otherwise, or,
(a) where there is a registered agreement for sale and purchase of the strata lot, the registered holder of the last registered agreement for sale and purchase; and
(b) where there is a registered life estate, the tenant for life;
"owner developer" means a person who, on the date that a strata plan is tendered to the registrar for deposit, is the person registered in the land title office as owner in fee simple of the land included in the strata plan, and, for the purposes of this Act, includes
(a) an affiliate, defined in the Company Act, of the owner developer; and
(b) a trustee of any right, title or interest of the owner developer, or affiliate, in the land included in the strata plan;
"phased strata plan" means a strata plan deposited in respect of a phased development under Part 2;
"purchaser" means a person who purchases a strata lot from an owner developer, and any subsequent purchasers of that strata lot, but does not include an affiliate, trustee, assignee or nominee of an owner developer, or any person whose business includes the development, sale or management of real property to whom the owner developer has transferred any right, title or interest in the land included in the strata plan, unless that person personally occupies the strata lot;
"regional district" means a regional district defined in the Municipal Act;
"registrar" means a registrar of a land title office;
"special resolution" means a resolution passed at a properly convened general meeting of the strata corporation, of which at least 14 days' notice specifying the purpose of the special resolution has been given, by not less than 3/4 of the votes of all persons entitled to vote thereon under this Act or the bylaws, present at the meeting in person or by proxy at the time the resolution is passed;
"strata corporation" means the corporation created by section 13;
"strata council" means the council designated or elected pursuant to the bylaws;
"strata lot" means a lot shown as such on a strata plan;
"strata plan" means a plan that
(a) is described in the heading to it as a strata plan;
(b) shows the whole or any part of the land comprised in the plan as being divided into 2 or more strata lots, whether on one level or more, and whether or not connected with another or others; and
(c) complies with the requirements of section 4, and includes a bare land strata plan and a plan of resubdivision or consolidation of any strata lot or strata lots on a strata plan;
"superintendent" means the Superintendent of Real Estate;
"unanimous resolution" means a resolution unanimously passed at a properly convened general meeting of the strata corporation, of which at least 14 days' notice specifying the purpose of the unanimous resolution has been given, at which all persons entitled to vote on it under this Act or the bylaws are present in person or by proxy at the time the resolution is passed;
"unit entitlement" means the unit entitlement of a strata lot and indicates the share of an owner in the common property, common facilities and other assets of the strata corporation and is the figure by reference to which the owner's contribution to the common expenses of a strata corporation is calculated.

(2) A schedule of unit entitlement that is acceptable to the superintendent is required for each strata plan.

(3) In the case of a residential strata plan, the owner developer may submit
   (a) a schedule of unit entitlement based on the following formula:
       \[
       \text{unit entitlement of strata lot} = \frac{\text{square footage of strata lot expressed as the nearest whole number}}{} 
       \]
       total square footage of all strata lots in the strata plan expressed as the nearest whole number
       and the unit entitlement so calculated shall be expressed as the nearest whole number resulting from the application of the formula; or
   (b) an alternative schedule of unit entitlement not based on the formula set out in paragraph (a).

(4) Where the owner developer submits a schedule under one paragraph of subsection (3), the superintendent may require the owner developer to submit a schedule under the other paragraph and may accept the schedule submitted, which, in his opinion, would result in a more equitable contribution by the owners to the common expenses of the strata corporation.

(5) In the case of a strata plan which is nonresidential, the superintendent may accept a schedule of unit entitlement if, in his opinion, it equitably reflects the relative square footage of the strata lots as set out in subsection (3) (a), the location of the strata lots, their proximity to the common property and any other factors relevant to their contribution to the common expenses.

(6) In the case of a strata plan consisting partially of residential lots and partially of lots that are not residential, or of various types of lots not residential, the superintendent may accept a schedule of unit entitlement if, in his opinion, it equitably reflects the various types of strata lots in respect of their contribution to the common expenses.

(7) Where in this Act reference is made to a strata lot being "conveyed" to a purchaser, the strata lot is, for the purposes of this Act, conveyed on registration in the land title office of a deed of land or transfer transferring title to the strata lot, or an agreement for sale for the strata lot or an assignment of the purchaser's interest in the agreement for sale.

1974, c.9, s.4; 1975, c.4, s.2, 1977-84 c.2; 1978-86 c.32, 334; (bracketed words in definition of "improvements" in subsection (1) struck out, 1985-26-18, effective October 1, 1985 for some purposes and in full effect January 1, 1987 (B.C. Reg. 29/85); 1985-75-1, effective February 10, 1986 (B.C. Reg. 18/86).

PART 1
STRATA TITLES AND STRATA CORPORATIONS

Subdivision into strata lots

2. Land may be subdivided into strata lots by the deposit of a strata plan, and the strata lots so created, or any one or more of them, may, subject to this Act, devolve or be disposed of in the same manner and form as any land the title to which is registered in a land title office.
Registration

3. (1) A registrar shall not accept a strata plan unless title to the land included in the strata plan is registered in the name of the owner developer and the land included in the strata plan is shown as:

(a) a single parcel on a subdivision plan, reference plan or air space plan deposited in a land title office;
(b) separate parcels, if the parcels are separated only by a highway, dyke, stream or right of way;
(c) separate parcels, if the parcels form part of a phased strata plan as set out in Form E; or
(d) separate parcels separated by land not owned by the person depositing the strata plan, if the approving officer has approved the development under section 10.

(2) The registrar shall examine the application and the instrument and strata plan produced in support of it, and, if satisfied that they are in order and comply with all applicable requirements for registration in the land title office, shall assign to the strata plan a serial deposit number and register new indefeasible titles for the strata lots shown on the strata plan as may be necessary.

(3) On the registration of a new indefeasible title, the former indefeasible title shall be cancelled in like manner as provided in section 185 of the Land Title Act in the case of a transfer of the whole or a portion of the land included in an indefeasible title.

(4) A strata plan shall be deemed, on registration, to be embodied in the register, and the owner shall hold his strata lot and his share in the common property subject to any interests affecting the same for the time being notified on the registered strata plan and subject to any amendments to strata lots or common property shown on that plan.


Strata plans

4. A strata plan shall

(a) delineate the plan boundaries of the land included in the strata plan and, except in the case of a strata lot in a bare land strata plan, the location of the buildings;
(b) bear a statement containing particulars necessary to identify the title to the land included in the strata plan;
(c) include a drawing illustrating the strata lots and distinguishing them by numbers or letters in consecutive order;
(d) subject to section 6, define the boundaries of each strata lot;
(e) show the approximate square footage of each strata lot, including the spaces referred to in section 5;
(f) show, in a schedule, the unit entitlement of each strata lot to be used in determining the undivided share of each owner in the common property and the proportion payable by each owner of contributions levied under section 35;
(g) show, in a schedule acceptable to the superintendent, to the nearest whole number, the share of each owner as a tenant in common of the property and assets of the strata corporation on the destruction of the building referred to in section 64, calculated in the proportion that the value of each strata lot bears to the total value of all strata lots on that strata plan; and, in respect of
a phased strata plan, the share of each owner shall bear an equitable relationship to the share of an owner of a comparable strata lot in a previous phase and not to the purchase price of the strata lot;

(h) for a strata plan that is not residential or is partially residential, show in a schedule acceptable to the superintendent the number of votes allocated to each strata lot and that, in his opinion, provides an equitable relationship between individual lots that are not residential and between the lots that are not residential as a group and the residential lots as a group, and in order to achieve the relationships required by this paragraph, the superintendent may approve a schedule in which the votes allocated to lots that are not residential are not expressed in whole numbers;

(i) show the address at which documents may be served on the strata corporation; and

(j) contain other data prescribed by regulation.


Strata plans: garages, etc.

5. Garages, parking spaces, storage areas and other areas or spaces related to the use of a strata lot that are intended for residential use shall not be designated as separate strata lots but shall be included as part of the strata lot or as part of the common property.

1977-64-3(2).

Strata plans: boundaries

6. (1) Except in the case of a bare land strata plan and unless otherwise stated on the strata plan, the common boundary of a strata lot with any other strata lot or with common property is the centre of the floor, wall or ceiling, as the case may be.

(2) For the purpose of section 4 (d), the boundaries of a strata lot shall be defined,

(a) by reference to the floors, walls and ceilings;

(b) in the case of a bare land strata plan, on a horizontal plane by reference to survey markers in compliance with the regulations that may be made by the Surveyor General and, for this purpose, unless otherwise shown on the strata plan, the boundaries shall be deemed to extend vertically upward and downward without limit; or

(c) where the strata lot includes balconies, patios, private yard areas, garages, parking spaces, storage areas and other areas and spaces not enclosed by floors, walls or ceilings, in any manner approved by the registrar.

1974-89-3(3.4); 1977-64-3.

Strata plans: deposit in land title office

7. (1) Every strata plan tendered for deposit in a land title office shall be accompanied by the certificate of a British Columbia land surveyor that the building shown on the strata plan is within the external boundaries of the land that is the subject of the strata plan, or that appropriate and necessary easements or other interests exist to provide for access to any parts of the building that are not within the boundaries;
(b) shall be accompanied by the number of copies of the plan required by the registrar for taxing authorities;
(c) shall comply with all regulations made by the Surveyor General for the purposes of this Act;
(d) shall be signed by the owner developer and the owner of a charge on all, or a part of, the land included in the strata plan;
(e) shall comply with section 4;
(f) shall, for a phased development or a bare land strata plan, be accompanied by a certificate of approval issued by an approving officer;
(g) shall, in the case of a conversion into strata lots of a previously occupied building by an owner developer other than the Crown, be accompanied by a certificate of approval under section 9 (5); and
(h) in all other cases shall be accompanied by a certificate of a British Columbia land surveyor issued under section 8.

(2) The registrar may accept a strata plan that has not been signed by all of the persons required to sign if, in his opinion, the interests of the persons who have not signed are not affected by the deposit of the plan.

Certificate of approval

8. (1) Where a strata plan is not a bare land strata plan, does not form part of a phased strata plan and includes a building that has not been previously occupied, or a building to be constructed and developed, the owner developer shall, on tendering a strata plan for deposit, file with the registrar a certificate of a British Columbia land surveyor, dated not more than 90 days prior to the date on which the strata plan is tendered for deposit, certifying that the building has not been occupied prior to the date of the certificate.

(2) In the case of a phased strata plan, the approving officer shall, on application by the owner developer, issue a certificate of approval for each separate phase, if it substantially complies with the requirements for that phase set out in Form E as may be amended under section 78, and the certificate shall be filed with the registrar by the owner developer on the deposit of the strata plan for the phase to which the certificate relates.

(3) In the case of a bare land strata plan, the approving officer shall, subject to the regulations, approve the strata plan prior to the plan being tendered for deposit in the land title office.

Approval of existing buildings

9. (1) On the conversion into strata lots of a previously occupied building by an owner developer, the approving authority may approve the strata plan, refuse to approve the strata plan or refuse to approve the strata plan until terms and conditions imposed by the approving authority are met. The decision is final.

(2) The approving authority shall not approve the conversion unless the building substantially complies with the applicable bylaws of the municipality, or, where the building is not situated within a municipality, substantially complies with the National Building Code of Canada issued by the Associate Committee on the National Building Code.
Code, National Research Council, as amended from time to time, and with any other bylaws that may apply to the building.

(3) The approving authority shall consider, in making its decision,
   (a) the priority of rental accommodation over privately owned housing in the area;
   (b) the proposals of the owner developer for the relocation of persons occupying the building;
   (c) the life expectancy of the building; and
   (d) projected major increases in maintenance costs due to the condition of the building.

It may consider any other matters that, in its opinion, are relevant.

(4) For the purposes of this section, "approving authority" means, in a municipality, the municipal council, or outside a municipality, the regional board of the regional district in which the land is situated.

(5) The approving authority shall, at the time of approval, issue a certificate in the form prescribed and the certificate shall be filed with the registrar on deposit of the strata plan.

1974-89-5; 1977-64-5.

Approval of separated parcels

10. Where a strata plan or a phased strata plan includes parcels of land that are separated by land not owned by the person depositing the strata plan, the approving officer may approve the strata plan or phased strata plan where he is of the opinion that the strata plan or phased strata plan would result in a stable functioning development of benefit to the community.

1974-89-6.

Dealings in strata property

11. (1) On registration of title to land or an interest in land acquired, or of an instrument evidencing a transfer of or interest in land, by a strata corporation, the registrar shall note the acquisition or transfer on the page of the strata plan that refers to dealings with the common property.

(2) The registrar shall not accept for registration an assignment, lease or agreement for sale of, or conveyance of title to, a strata lot unless it is accompanied by a certificate in Form A that the strata corporation has received payment in full of all money owing to it for that strata lot. The certificate shall be valid for a period of 3 months.


Common property

12. (1) The common property, common facilities and other assets of the strata corporation shall be held by the owners as tenants in common in shares proportional to the unit entitlement of their strata lots.

(2) Subject to this Act, a share in the common property, common facilities and other assets of the strata corporation shall not be dealt with separately from the strata lot of the owner. An instrument dealing with a strata lot operates to deal with the share of the owner in the common property, common facilities and other assets of the strata corporation, without express reference.
(3) The registrar shall show on every indefeasible title for a strata lot the owner's share in the common property created by that plan.

1974-89-8; 1977-64-7; 1982-60-90, proclaimed effective August 1, 1983.

Strata corporation

13. (1) The owners of the strata lots included in a strata plan and their successors shall, on deposit of the strata plan in a land title office, constitute and be members of a corporation under the name "The Owners, Strata Plan No. ....." (the registration number of the strata plan).

(2) The Company Act does not apply to a strata corporation.

(3) In this section and sections 14 to 16 "owners" includes

(a) the persons entitled to the land included in the strata plan under section 64 (3); and

(b) the lessee, sublessee or his successor in title of a strata lot under section 69.

1974-89-9(1 to 3); 1978-25-334.

Duties of corporation

14. Subject to this Act, the strata corporation is responsible for the enforcement of the bylaws, and the control, management and administration of the common property, common facilities and the assets of the strata corporation.

1974-89-9(4).

Legal proceedings

15. (1) A strata corporation may, as representative of the owners of the strata lots included in the strata plan,

(a) bring proceedings for damages and costs for any damage or injury to the common property, common facilities and the assets of the strata corporation caused by any person; and

(b) be sued on any matter relating to the common property, common facilities or assets of the strata corporation.

(2) A judgment against the strata corporation is for all purposes a judgment against the owners of the strata lots included in the strata plan in amounts proportionate to their unit entitlements shown on the strata plan, and execution may be made accordingly.

(3) Where judgment against the strata corporation relates to the limited common property, the judgment shall be deemed to be against the owners who are entitled to use the limited common property in the unit entitlement proportion.

(4) The strata corporation may join, in proceedings against it, an owner whose act, default or omission gave rise to the claim against the corporation.

(5) Except as provided in subsections (2), (3) and (4), an owner has no personal liability for damages relating to the use of the common property, common facilities or the assets of the strata corporation, for damages caused by the corporation, or for a contract made, or debt or liability incurred, by the corporation.

(6) An owner may sue the strata corporation about any matter relating to the common property, common facilities or the assets of the strata corporation.
(7) The strata corporation may sue on its own behalf and
   (a) on behalf of an owner about matters affecting the common property,
       common facilities, and other assets of the strata corporation; and
   (b) if authorized by special resolution of the strata corporation, on behalf of
       those owners who consent in writing to the strata corporation so doing,
       about matters affecting individual strata lots notwithstanding that the
       strata corporation, in the case of a contractual claim, was not a party to
       the contract about which the proceeding is brought.

(8) The legal or court costs in a proceeding brought in whole or in part on behalf
   of owners on a matter affecting their strata lots shall be borne by the individual owners
   in the proportion in which their interests are affected.

Owners who are lessees

16. When there is a deemed assignment under section 69,
   (a) the lessor shall not deal with his estate in reversion in derogation of his
       grant;
   (b) the owners who are lessees shall not, without the lessor’s consent, do or
       purport to do any act that may affect the lessor’s estate in reversion, and,
       without limiting the generality thereof, shall not, without the lessor’s
       consent, exercise any of the powers conferred on owners under sections
       20 (1), 22 (1) and 23 (1);
   (c) section 12 (1) applies to owners who are lessees to the extent of their
       estates as lessees only; and
   (d) sections 64 to 66 do not apply to owners who are lessees.

Contracts about common property

17. A contract entered into by a strata corporation providing for the control,
    management and administration of the common property, common facilities or the
    assets of the strata corporation shall be limited to matters affecting the security and
    maintenance of the common property, common facilities or the assets of the strata
    corporation, and, without either party to the contract incurring any liability for breach,
    (a) may be cancelled on 3 months’ notice at the option and discretion of the
        owners, by special resolution of the corporation; or
    (b) may be cancelled on 3 months’ notice by the management company or
        manager.

Voting rights of mortgagees

18. (1) Where an owner’s interest is subject to a registered mortgage, the
    mortgage may provide that the power of voting conferred on an owner by or under this
    Act be exercised by the mortgagee, but only in respect of any matter relating to
    insurance, maintenance, finance or other matters affecting the security for the
    mortgage.

    (2) This section does not apply unless the mortgagee has given written notice of
        his mortgage to the strata corporation, and of his intention to exercise his power to
        vote, to the owner.
(3) Where a mortgagee does not give the notice to the owner under subsection (4) at least one day prior to the meeting, the owner has the right to vote personally or by proxy.

(4) Where a meeting is adjourned for lack of a quorum, the mortgagee is not entitled to vote at a subsequent meeting unless he had given his notice of intention to vote at least one day prior to the original meeting.

1974-89-11(1,2,3,4)

Notice of default to mortgagee

19. Where a mortgagee has given written notice of his mortgage to the strata corporation, the corporation shall send to the mortgagee a copy of any notice of default that it sends to the owner.

1974-89-11(5)

Dispositions of common property

20. (1) The owners may, by special resolution, direct the strata corporation to dispose of all or part of its common property or assets, and, without limiting the generality of the foregoing, may direct the strata corporation to grant an easement or a restrictive covenant burdening the common property included in the strata plan.

(2) Where there is a resolution under subsection (1), the strata corporation shall execute the appropriate instrument.

(3) Where there is a resolution under subsection (1) and all persons, other than owners, having registered interests in the common property evidenced by memorandum on the page of the strata plan that refers to dealings in the common property have, in writing, consented to the proposed disposition, the strata corporation shall execute the appropriate instrument. The instrument is valid and effective without execution by a person having an interest in the common property.

(4) The receipt of the strata corporation for the purchase money, rent, premiums or other money payable to the strata corporation under the terms of a disposition, is a sufficient discharge, and shall exonerate all persons taking under the instrument from any responsibility for the application of the money.

(5) An instrument referred to in subsection (2) presented for registration in a land title office shall be endorsed with or accompanied by a certificate under the seal of the strata corporation that the resolution was passed and that the instrument conforms to the terms of the resolution.

(6) An instrument referred to in subsection (3) presented for registration in a land title office shall be accompanied by a certificate under the seal of the strata corporation that the resolution was passed, that the instrument conforms with the terms of the resolution, and shall be accompanied by the written consents referred to in that subsection.

(7) The certificate is, so far as the purchasers of the asset and the registrar are concerned, conclusive evidence of the facts stated.


Registration of disposition

21. (1) The registrar shall register each disposition of common property by registering a new indefeasible title for the land disposed of, and notification of the disposition shall not be made on any indefeasible title.
(2) On registration of a disposition of common property, the registrar shall, before registering a new indefeasible title, note the disposition on the page of the strata plan that refers to the common property.

(3) The registrar shall register each disposition of an interest in land owned as an asset of the strata corporation in the same manner as is provided for the registration of a disposition of an interest in land in a land title office.

(4) Notwithstanding the Land Title Act, a disposition, not including a lease for a term of 3 years or less, of all or part of the common property of a strata corporation under section 20 is a subdivision of land, and Part 7 of the Land Title Act applies.

1974-89-12(6 to 9); 1977-64-9; 1978-25-332,335; 1982-60-91, proclaimed effective August 1, 1983.

Easements and covenants

22. The strata council may, by resolution, accept on behalf of the owners a grant of easement or a restrictive covenant benefiting the land included in the strata plan. The strata council shall file the resolution in the appropriate land title office.


Acquisition of property

23. (1) The owners, by special resolution, may direct the strata corporation to acquire as sole owner, or as a tenant in common with other strata corporations, any property or any interest in it as an asset of the strata corporation, or as an addition to the common property and, without limiting the generality of the foregoing, may include a strata lot within a strata plan, or land which is not adjacent to the land included in that strata plan.

(2) Every document evidencing acquisition, so far as it is an interest in land that is presented for registration in a land title office shall be endorsed with or accompanied by a certificate under the seal of the strata corporation that the resolution was passed.

(3) On application of the strata corporation to register title to an interest in land under this section, the registrar shall note the document evidencing the acquisition by the strata corporation on the page of the strata plan that refers to common property.

(4) It is not necessary to name as grantees the owners of the strata lots or refer to their unit entitlements in any conveyance to them if these words are used to describe the grantees: “The owners, Strata Plan No. [address], a corporation under the Condominium Act on behalf of the strata lot owners.”

(5) The registrar shall register an acquisition of an interest in land by a strata corporation as an asset in the same manner as is provided for the registration of an interest in land in a land title office.


Easement implied

24. (1) In respect of each strata lot included in a strata plan, there is implied, without registration,

(a) in favour of the owner of the strata lot, and as appurtenant to it, an easement for its subjacent and lateral support by the common property and by every other strata lot capable of affording support;
(b) as against the owner of the strata lot and to which the strata lot is subject, an easement for the subjacent and lateral support of the common property and of every other strata lot capable of enjoying the support of that strata lot;

(c) in favour of the owner of the strata lot, and as appurtenant to it, easements for the passage or provision of water, sewage, drainage, gas, oil, electricity, garbage, heating and cooling systems and other services, including telephone, radio and television services, through or by means of any pipes, wires, cables, chutes or ducts for the time being existing in the land included in the strata plan to the extent to which those pipes, wires, cables, chutes or ducts are capable of being used in connection with the enjoyment of the strata lot; and

(d) as against the owner of the strata lot, and to which the strata lot is subject, easements for the passage or provision of the systems and services described in paragraph (c) for the time being existing within the strata lot, as appurtenant to the common property and also to every other strata lot capable of enjoying the easements.

(2) In the case of a bare land strata plan, a strata lot does not have the benefit of, and is not subject to, the burden of the easements implied under subsection (1) (c) and (d) for pipes, wires, cables, chutes or ducts the existence of which was not disclosed to the purchaser of the strata lot by the owner developer in the prospectus required under the Real Estate Act, or to which the owner of the strata lot burdened by the easement has not consented in writing.

(3) All ancillary rights and obligations reasonably necessary to make easements effective apply in respect of easements implied or created under this Act.


Easement for shelter

25. (1) The owner of a strata lot is entitled to have his strata lot sheltered by every part of the building shown in the strata plan capable of affording shelter.

(2) This right is an easement for shelter to which every part of the building shown in the strata plan capable of affording shelter is subject.

(3) The easement entitles the owner of the dominant tenement to enter on the servient tenement to replace or restore any shelter.

(4) This section does not apply to buildings constructed on a strata lot shown on a bare land strata plan.


Bylaws of strata corporation

26. (1) The strata corporation shall have bylaws providing for the control, management, administration, use and enjoyment of the strata lots and common property, common facilities and other assets of the strata corporation, and the bylaws shall be the bylaws set out in Part 5 until they have been altered or repealed under this Act at the time of alteration or repeal.

(2) Where a strata plan is exclusively residential or is a bare land strata plan, the bylaws shall not be amended unless a strata council has been elected under the bylaws and the changes have been approved by special resolution, or, where a unanimous resolution is required under this Act or bylaws, by unanimous resolution.
(3) In the case of a strata corporation administering a strata plan in which there is not more than one residential strata lot, the bylaws may be amended or repealed at any time after the deposit of the strata plan and the changes have been approved by special resolution, or, where a unanimous resolution is required under this Act or the bylaws, by unanimous resolution.

(4) In the case of a strata corporation administering a strata plan that is not exclusively residential but contains more than one residential strata lot, the bylaws shall not be amended unless the changes are made as specified in the bylaws, or a strata council has been elected and the changes have been approved by a resolution passed at a properly convened meeting of the strata corporation, of which at least 14 days' notice specifying the purpose of the meeting has been given in the same manner as notice is required to be given of a special resolution, by not less than 3/4 of the votes of the owners of the residential strata lots and not less than 3/4 of the votes of the other owners of strata lots entitled in each case to vote on it under this Act or the bylaws and who are present at the meeting in person or by proxy at the time the resolution is passed.

Bylaws: prospectuses

27. (1) Where a prospectus for a strata plan that is exclusively residential or that is a bare land strata plan has been filed with the superintendent, the proposed bylaws of the strata corporation as disclosed in the prospectus shall not be amended before the deposit of the strata plan unless the superintendent has accepted the changes.

(2) Where a prospectus for a strata plan that is not exclusively residential but contains more than one residential strata lot has been filed with the superintendent, the proposed bylaws of the strata corporation, as disclosed in the prospectus, shall not be amended before the deposit of the strata plan unless the superintendent has accepted the changes.

(3) The superintendent may accept changes under this section if, in his opinion, the particular nature of the strata corporation is such that the proposed changes would be of material benefit to it and the owners.

Bylaws: general rules

28. (1) The bylaws set out in Part 5 have force and effect from the time of the deposit of the strata plan in the land title office until amended or repealed under sections 26 and 27.

(2) An amendment or repeal of a bylaw set out in Part 5 has no effect until the strata corporation gives notice to the registrar of the amendment or repeal in the form prescribed by regulation. On receiving the notice, the registrar shall make a reference to the notice on the deposited strata plan.

(3) The strata corporation shall, on application of an owner or mortgagee of a strata lot or any person authorized in writing by him, make available for inspection the bylaws for the time being in force.

(4) The bylaws for the time being in force bind the strata corporation and the owners to the same extent as if the bylaws had been signed and sealed by the strata corporation and each owner and contained covenants on the part of the corporation with each owner and on the part of each owner with every other owner and with the corporation to observe and perform their provisions.
Dealings in strata lots

29. Subject to section 30, the bylaws do not operate to prohibit or restrict
(a) a devolution of a strata lot; or
(b) a transfer, lease, mortgage or other dealing with a strata lot,
or to destroy or modify an easement implied or created by this Act.

Restriction on leasing: general

30. (1) A strata corporation administering a strata plan that is wholly or partially
residential may, by bylaw, limit the number of residential strata lots within the strata
plan that may be leased by the owners.
(2) A bylaw under subsection (1) shall set out the number of strata lots that may
be leased and the manner in which the limitation will be enforced.

Leasing rules for owner developer

31. (1) An owner developer who has leased, or intends to lease, one or more
residential strata lots in a strata plan shall disclose to every prospective purchaser of a
residential lot in the plan
(a) the number of strata lots leased by him at the date the purchaser agrees to
purchase his strata lot;
(b) the number of additional residential lots he intends to lease;
(c) the length of time he intends to lease the lots; and
(d) the text of any bylaw limiting the number of residential lots in the plan that
may be leased by the owners.
(2) An owner developer shall satisfy subsection (1) by delivering a rental disclosure
statement in prescribed form to the superintendent prior to the first sale of a strata lot, and
to the purchaser before the owner accepts an offer to purchase or the purchaser signs an
agreement to purchase a strata lot.
(2.1) Notwithstanding subsections (1) and (2), where the first agreement to pur-
chase a strata lot in a strata plan was entered into before February 1, 1978, the owner
developer may apply to the superintendent to approve and file a rental disclosure
statement for the strata plan and, if the superintendent approves and files the rental
disclosure statement, the owner developer shall be deemed to have complied with
subsections (1) and (2) and may lease residential strata lots in accordance with the rental
disclosure statement.
(3) A bylaw passed by a strata corporation under section 30 does not restrict the
right
(a) of the owner developer to lease the number of strata lots for the periods
shown on the rental disclosure statement; or
(b) of an owner who has leased his strata lot to a tenant pursuant to a tenancy
agreement entered into before the bylaw is passed to continue the lease
pursuant to the agreement or renew or extend it.
(4) Where an owner developer sells a strata lot that is leased to a tenant, or that he
intended to lease to a tenant, pursuant to the disclosure statement, the purchaser may
lease or continue to lease the strata lot to a tenant for the period disclosed in the statement.
Thereafter the purchaser is not entitled to lease or continue to lease the strata lot except
under the bylaws of the strata corporation.
(5) The owner developer may, with the approval of not less than 75% of the owners of residential strata lots, excluding the owner developer and owners who are leasing their strata lots, modify the rental disclosure statement by changing the number of strata lots he intends to lease or the length of time he intends to lease them or both.

(6) Where a rental disclosure statement is altered under this section, subsections (3) (a) and (4) apply.


Restrictions: appeal

32. (1) Where
(a) the owner developer is unable to obtain the owners' consent under section 31 (5); or
(b) an owner is prevented from leasing by a bylaw under section 30; and
(c) hardship results to the owner developer or owner,
he may appeal to the strata council for permission to lease his strata lot, and the council shall not unreasonably refuse the appeal.

(2) Where an owner developer or owner appeals to the strata council, the council shall hear the appeal within 21 days after the date the owner developer or owner requested the strata council to hear the appeal, and, if the strata council has not delivered its decision within 7 days after hearing the appeal, the appeal shall be deemed to have been allowed.

(3) The strata council may on an appeal authorize the lease of one or more strata lots in contravention of the bylaw, or permit alteration of a rental disclosure statement without the consent of the owners.

1977-64-15

Offence

33. (1) An owner developer or owner who fails to comply with or contravenes a requirement of section 30 or 31 is guilty of an offence.

(2) A promise or agreement to purchase or lease a strata lot in a plan that is wholly or partially residential is not enforceable against the purchaser or tenant by an owner developer or owner who has contravened a provision of section 30 or 31.

1977-64-15

Duties and powers of strata corporation

34. (1) The strata corporation shall
(a) obtain and maintain insurance on the buildings, the common facilities and any insurable improvements owned by the strata corporation to the full replacement values under section 54;
(b) review annually the adequacy of the insurance;
(c) pay the premiums on the insurance policies;
(d) keep in a state of good and serviceable repair and properly maintain common property, common facilities and assets of the strata corporation; and
(e) comply with notices or orders by a competent public or local authority requiring repairs or work to be done in respect of the land included in the strata plan or the buildings, common facilities or assets of the strata corporation.
(2) The strata corporation may
(a) carry out repairs or work required by the notice or order of a competent public or local authority on a strata lot, whether authorized by the owner or not;
(b) obtain and maintain insurance in respect of any other perils, including liability, under section 54; and
(c) remove privileges or fix fines for breach of the bylaws, rules and regulations.

(3) Money spent under subsection (2) is due and payable to the strata corporation on demand, and shall be added to the levy on that owner under section 35 for the following month.

Administrative expenses and reserves
35. (1) The strata corporation shall
(a) establish a fund for administrative expenses sufficient for the control, management and administration of the common property, for the payment of premiums on policies of insurance and for the discharge of other obligations of the corporation;
(b) establish a contingency reserve fund not exceeding an amount calculated in the manner fixed by regulation and determine the annual levy for the contingency reserve fund; and the levy shall, if the amount of the reserve is less than 25% of the total annual budget of the strata corporation, be not less than 5% of that budget; and the strata corporation shall hold the fund as a reserve fund to pay unusual or extraordinary future expenses;
(c) determine the amounts to be raised for the purposes set out in this section and notify the strata lot owners of those amounts; and
(d) raise the amounts so determined by levying contributions on the owners in proportion to the unit entitlement of their respective strata lots in the manner provided for in the bylaws.

(2) The strata council shall not make expenditures out of the contingency reserve fund without a special resolution, unless the strata council considers that the expenditure is necessary to meet an emergency.

(3) Unless otherwise provided in the bylaws, there shall be no reduction of the contribution of the owner developer under subsection (1) (d) for strata lots owned by him.

(4) Unless otherwise provided in the bylaws, the contributions levied under subsection (1) (d) shall become due and payable on the first day of each month.

(5) Subject to section 36, a strata corporation may recover from an owner in a court of competent jurisdiction a sum of money owing to the strata corporation
(a) as the owner's monthly contribution under this section; or
(b) for money expended by the strata corporation under section 34.

(6) An action may be brought against the owner at the time the debt was due and against the owner of the same strata lot at the time the action is brought, jointly and severally.
Certificate of corporation

36. (1) The strata corporation shall, on the application of an owner, or purchaser or his authorized agent, certify within 7 days
(a) the amount of contribution of the owner under section 35;
(b) the manner in which the contribution is payable;
(c) the extent of payment;
(d) the amount of money expended for the owner under section 34 (2) and not recovered by it;
(e) the amount, if any, by which the expenses of the strata corporation for the current fiscal year are expected to exceed the expenses budgeted for the fiscal year;
(f) the amount of the contingency reserve fund;
(g) that there are no amendments to the bylaws not filed in the land title office other than those certified;
(h) that no notices have been given for a unanimous or special resolution that has not been voted on, other than those certified; and
(i) that there are no pending proceedings against the corporation of which it is aware other than those certified.

(2) In favour of a person dealing with that owner, the certificate is conclusive evidence of the matter certified in it.

(3) The strata corporation may require a fee of not more than $5, or a greater amount prescribed by the regulations, from the person to whom a certificate under subsection (1) is issued.


Remedies for owner's default

37. (1) Where an owner defaults in the payment of his share of the common expenses, the strata corporation may register in the land title office a certificate in Form B showing the amount owing and the legal description of the strata lot of that owner.

(2) A certificate noted in the register is, except as provided in subsection (6), a charge for the amount owing in favour of the strata corporation, in priority to every other lien or charge of whatever kind except those under the Builders Lien Act, and those of the Crown, other than mortgages in favour of the Crown.

(3) On application by the strata corporation, the court may order that judgment be entered against the owner in favour of the strata corporation for the amount owing to the strata corporation on the charge by the owner. The order shall provide that, failing payment to the strata corporation of the amount owing within 30 days after the order is made, the strata corporation may sell the strata lot at a price and on terms to be approved by the court, taking into account the priority of the charge.

(4) The strata corporation shall, before seeking an order for sale under subsection (3), give not less than 4 days' notice of the application to the owner and the owners of all charges ranking in priority after the charge in favour of the strata corporation, by service of a written notice and copies of all documents filed with the court in support of the application.

(5) The strata corporation shall, on receipt of the amount owing, file with the registrar acknowledgment of payment in Form C.

(6) The priority of the strata corporation's charge under this section over a charge in favour of another person, as between them, and subject to a contrary intention appearing from the instrument creating them, is according to the date and time of the
applications to register or file, to the extent that the amount owing to the strata corporation consists of the owner’s share of common expenses incurred on satisfaction by the strata corporation of a judgment entered against the strata corporation.

(7) In this section “common expenses” includes the contribution levied under section 35, and the amounts, if any, added to the levy under section 34 (3).

(8) A strata corporation may add the land title fee and the legal and administrative costs of filing under subsection (1) or (5) and the legal costs of a proceeding under subsection (3) to the amount owing by the owner to the strata corporation.

Certificate of full payment

38. (1) The strata corporation, on the application of the owner, shall, within 7 days, issue a certificate in Form A that no money is owing to it by the owner.

(2) In preparing the certificate, the strata corporation may take into account arrears in contributions to common expenses, fines for breach of the bylaws, money expended under section 34 (2), unsatisfied judgments against the owner and pecuniary awards of an arbitrator. It shall not take into account claims for damages caused by the owner and not determined by an arbitrator or a court.

(3) The strata corporation may issue the certificate on arrangements with the owner, satisfactory to it, that will ensure that money owing to the corporation will be paid on sale of the strata lot.

(4) A fee not greater than a prescribed amount may be charged for the certificate.

No claim on contingency fund

39. On the sale of a strata lot, the vendor shall have no claim against the contingency reserve fund established under section 35.

Mandatory injunction

40. Where a strata corporation fails to fulfil an obligation under this Act or bylaws, the owner of a strata lot, or a registered mortgagee, may apply to the court for a mandatory injunction requiring the strata corporation to perform the obligation.

Failure to appoint strata council

41. Where it is shown to the minister that a strata corporation has failed to elect or re-elect a strata council within the time required by this Act or bylaws, or that there is no longer a quorum of members, the minister may appoint one or more persons to act as the strata council or to make up a quorum, for the period of time and on the terms considered appropriate by the minister to ensure that the strata corporation complies with this Act and bylaws.

Oppressive acts

42. An owner may refer to arbitration or may apply to the court to prevent or remedy a matter where he alleges

(a) the affairs of the strata corporation are being conducted, or the powers of the corporation or strata council are being exercised, in a manner oppressive to one or more owners, including himself; or
(b) that some act of the strata corporation has been done or is threatened, or that some resolution of the owners or a class of owners has been passed or is proposed that is unfairly prejudicial to one or more owners, including himself.

1977-64-20.

Court order

43. On an application to court under section 42, the court may make the interim or final order it considers appropriate, and, without limiting the generality of that power, may

(a) direct or prohibit an act of council or vary a transaction or resolution; and
(b) regulate the conduct of the corporation’s future affairs.

1977-64-20.

Arbitration

44. (1) The strata corporation or an owner may, prior to the commencement of a court proceeding about a dispute, refer to arbitration the dispute between the strata corporation and an owner or between 2 or more owners about any matter, including, without limiting that statement, a dispute about

(a) contributions to common expenses or money paid under section 34 (2);
(b) fines for the breach of the bylaws or rules and regulations;
(c) damages to common property, common facilities and other assets of the strata corporation; and
(d) decisions of the strata council or the strata corporation where the strata corporation consists of 2 strata lots.

(2) Notice shall be given to the strata council, the strata corporation or the owner affected, as the case may be. Within 2 weeks after the notice is received, the parties to the reference shall agree on and appoint a single arbitrator.

(3) If they cannot agree on a single arbitrator, each party shall, within one further week, appoint an arbitrator, and the 2 arbitrators so appointed shall appoint a third arbitrator who shall be the chairman. If the 2 arbitrators cannot agree on a chairman, the Arbitration Act applies.

(4) Unless the parties otherwise agree, each arbitrator shall be an owner and occupier of a strata lot in another strata development for at least one year, but may not be a member of the strata corporation affected by the arbitration.

1974-89-24(1 to 5); 1975-74-11.

Arbitration proceedings

45. (1) The arbitrators shall hear the reference as soon as possible at a convenient location in the strata plan or nearby.

(2) The arbitrators shall conduct the hearing as they believe proper, allowing each party adequate opportunity to present or rebut evidence.

(3) The arbitrators may accept evidence on oath, affidavit or otherwise, as they believe proper, whether or not admissible in a court. Members of the corporation who are not parties may present evidence only if requested to do so by a party, but the hearing is open to all members.

(4) The arbitrators may make whatever award they consider just and equitable, including an order in the nature of a mandatory or prohibitive injunction, or for
payment of pecuniary damages and shall make an order about the contribution of the parties to the cost of the arbitration and remuneration of the arbitrators.

(5) The award of the arbitrators may be entered in the registry of the court and enforced with the leave of the court in the same manner as an order of that court.

(6) Subject to section 44 (3), the Arbitration Act does not apply.

(7) Neither section 44 nor this section requires a strata corporation to be a party to an arbitration proceeding between 2 or more owners only and the proceeding is not about a breach of the bylaws or regulations, or about the common property, common facilities or other assets of the strata corporation.

Leases of strata lots

46. (1) Before an owner leases his strata lot for a term of more than one month, he shall give the strata corporation the undertaking in Form D signed by the tenant, that he and the other occupants of the strata lot will comply with this Act, bylaws, rules and regulations of the strata corporation. The lease shall include or be deemed to include this undertaking as a condition of the lease.

(2) The owner is not released and he and the tenant are jointly and severally liable for a breach of the undertaking.

(3) Where a tenant or occupant of a strata lot contravenes this Act, bylaws, rules or regulations of the strata corporation, the strata corporation, or a person on its behalf, may notify the tenant in writing of the contravention and demand its correction.

(4) If the tenant or occupant does not comply within 2 weeks, the strata corporation may notify the owner and send a copy to the tenant.

Termination of tenancy

47. (1) Where a tenant or occupant, 2 weeks after he receives a copy of the notice under section 46 (4), continues to contravene, or at frequent intervals contravenes, this Act, bylaws, rules or regulations, the strata corporation may terminate the tenancy pursuant to the Commercial Tenancy Act or Residential Tenancy Act, as applicable.

(2) For subsection (1), the strata corporation has all the rights of and is deemed the agent of the strata lot owner. The strata council may exercise those rights for the corporation.

(3) For subsection (1), continuous or frequent contravention constitutes just cause under the appropriate tenancy Act for termination of the tenancy.

Unanimous resolutions

48. (1) Where the number of owners required under section 1 is not present in person or by proxy for consideration of a unanimous resolution, the meeting shall be adjourned for one week or to a convenient date, and written notice of the adjournment given to all persons entitled to vote on the resolution.

(2) At the meeting following the adjourned meeting the unanimous resolution shall be deemed passed if unanimously passed by all persons entitled to vote present at the meeting in person or by proxy at the time the resolution is passed, and the requirements for a quorum as set out in the bylaws do not apply to that meeting.
Maximum expenditure by strata council

49. Unless otherwise provided by a bylaw added to Part 5, a strata council shall not, except in emergencies, authorize, without authorization by a special resolution of the strata corporation, an expenditure exceeding $500 which was not set out in the annual budget of the corporation and approved by the owners at a general meeting. 1974-89-27; 1975-74-13; 1977-64-22.

Fines exceeding $25

50. Where a strata corporation wishes to impose a fine of more than $25 for a breach of a bylaw, rule or regulation, it shall amend the bylaws in Part 5 and the resolution shall recite the bylaw, rule or regulation and the amount of the fine. 1975-74-14.

Separate residential and commercial sections

51. (1) The owners of residential strata lots in a strata plan that includes lots that are residential and not residential may petition the strata corporation for permission to form a separate section within the corporation consisting of all the residential strata lots in the strata plan.

(2) The owners of nonresidential strata lots in a similar strata plan may petition the strata corporation for permission to form a separate section within the corporation consisting of all the lots in the strata plan that are not residential.

(3) The petition shall include amendments to the bylaws necessary for the formation and administration of the separate section, and, if applicable, an application to have an area designated as limited common property.

(4) Where the petition is signed by 75%, or more, of the owners whose strata lots are included in the proposed separate section, the strata corporation shall approve the formation of the section, may approve the amendments to the bylaws and may designate an area as limited common property.

(5) The owner developer may, as the owner of all strata lots, cause the strata corporation to form the separate sections.

(6) A change in the bylaws on formation of a separate section requires the consent of the superintendent if made within one year after the strata plan is filed.

(7) Any matter on which the strata corporation and the members of the proposed separate section cannot agree may be referred to arbitration under section 44. 1977-64-23.

Separate section bylaws, etc.

52. (1) Bylaws set out in Part 5 may be amended for the strata lots within a separate section by a special resolution passed by the members of the separate section and approved by the strata corporation.

(2) A special resolution under subsection (1)
(a) is passed if it receives the affirmative votes of 75% of the owners of the strata lots within the separate section;
(b) shall be filed by the strata council in the land title office; and
(c) shall specify the strata lots to which it applies.
(3) The members of a separate section may elect an executive, call and hold meetings and pass resolutions in the same manner as the strata corporation, and the bylaws set out in Part 5 apply.

(4) The separate section may pass rules, subject to the general bylaws, binding on section members, on matters of common interest to the section and on use of limited common property.

(5) A separate section has the same power as the strata corporation to levy contributions on section members for expenditures they authorize, to collect contributions, to employ staff and to acquire and dispose of land and other property.

(6) The separate section shall not enter into a contract in the name of the strata corporation and the strata corporation has no liability for debts incurred or contracts made by the section.


Limited common property

53. (1) A strata corporation, by special resolution, may designate an area as limited common property for the use of one or more strata lot owners and may remove the designation.

(2) An owner developer may, when the strata plan is tendered for registration, designate areas on the plan as limited common property for the exclusive use of one or more strata lot owners.

(3) A designation by the owner developer on the plan may only be removed by amendment to the plan under sections 57 to 59.

(4) The special resolution shall be filed in the land title office, together with, if it designates an area, a sketch map satisfactory to the registrar defining the areas of limited common property, and shall specify each lot entitled to the benefit of the designation. The registrar shall note the resolution on the page of the plan that refers to dealings with the common property.

(5) A designation for the exclusive use of some strata lot owners shall, where necessary because of the nature of the limited common property, be subject to the right of ingress and egress for members, employees and agents of the strata corporation.

(6) A resolution designating limited common property, granting the exclusive use of common property or removing, adding to or altering the designation or grant, has no effect after May 17, 1978, unless a copy of the resolution is filed in the land title office.


Insurance

54. (1) The strata corporation

(a) shall obtain and maintain insurance for the buildings, common facilities and any insurable improvements owned by the strata corporation to their replacement value against fire and against other perils as are usually the subject of insurance in respect of similar properties; and

(b) may obtain and maintain insurance against other perils, including liability, to the amount it considers advisable.

(2) For this purpose the strata corporation has an insurable interest in the buildings, the common property, common facilities and assets of the corporation and in the subject matter of other perils insured.
(3) Notwithstanding the terms of the policy,
(a) the strata corporation;
(b) the owners and tenants from time to time of every strata lot shown on the
strata plan; and
(c) all persons normally occupying the strata lots
shall be deemed to be included as the named insured on a policy of insurance in force
under subsection (1).

(4) Where the proceeds of a policy of insurance under this section are not
sufficient to satisfy a claim made against the policy, the contribution of an owner
ward the deficiency is limited in the same manner as his contribution in respect of a
judgment as provided in section 15.

1974-89-30(1.9,10); 1975-74-17; 1977-64-25.

Insurance payments

55. (1) A payment by an insurer under a policy of insurance shall, notwith­
standing the terms of the policy, be paid to the order of the insurance trustees, if any,
designated by the bylaws. Otherwise it shall be paid to or to the order of the strata
corporation.

(2) Subject to subsection (3) and to sections 64 to 66, the strata corporation shall
forthwith use the proceeds for the repair or replacement of the damaged buildings,
common property, common facilities and assets of the strata corporation so far as they
may be lawfully effected.

(3) Where the strata corporation resolves not to repair or replace the damaged
buildings, common property, common facilities and insurable improvements, a
payment by the insurer shall, notwithstanding subsection (2), be paid,
(a) first, to every person who has an interest in the proceeds, as his interest
may appear; and
(b) second, to the insurance trustees, or to the order of the strata corporation.

(4) A policy of insurance issued to a strata corporation under section 54 (1) is not
liable to be brought into contribution with another policy of insurance except another
policy issued on the same property under section 54 (1), and, notwithstanding the
provisions of the policy, shall be deemed not to be other insurance in relation to the
other policy.

1974-89-30(2 to 5); 1975-74-17; 1977-64-25.

Owner’s Insurance

56. (1) Notwithstanding section 54, the Insurance Act or any other law, an
owner may obtain and maintain insurance for loss
(a) or damage to his strata lot against fire and other perils in excess of
insurance by the strata corporation;
(b) or damage to his strata lot in excess of insurance on the improvements by
the strata corporation; or
(c) of rental value of his strata lot in excess of insurance by the strata
corporation.

(2) A policy of insurance issued to an owner is not liable to be brought into
contribution with any other policy of insurance except another policy issued on the
same property, and, notwithstanding the provisions of the policy, shall be deemed not
to be other insurance in relation to such other policy.
Section 54 does not restrict the capacity of any person to insure otherwise than as provided in that section.

In the case of a bare land strata plan, an owner may, notwithstanding the Insurance Act or any other insurance law, obtain and maintain insurance on property constructed or created on the strata lot, and subsection (3) applies to that insurance.

Amendment of plan in special cases

57. (1) A strata plan may be amended to
(a) divide the common property;
(b) consolidate additional land owned by the strata corporation with the land included in the strata plan;
(c) remove a designation of limited common property designated on the strata plan;
(d) divide a strata lot into 2 or more strata lots; or
(e) consolidate a strata lot with one or more strata lots.

(2) The owners may, by special resolution, direct the strata corporation to amend the strata plan under subsection (1) (a) or (b).

(3) Where there is a resolution to divide the common property or to consolidate additional land with the land on the plan, the strata corporation shall deposit with the registrar a
(a) subdivision, reference or explanatory plan satisfactory to him and complying so far as he may consider necessary with sections 4 to 7 and the land title office requirements; and
(b) certificate under the seal of the strata corporation that the resolution has been passed and that the plan conforms to the terms of the resolution.

(4) On deposit of the material, the registrar shall, if satisfied that it is in order and complies, so far as he considers it necessary, with the Land Title Act,
(a) accept the plan under the Land Title Act and register new indefeasible titles as he considers necessary; and
(b) note the subdivision on the page of the strata plan that refers to dealings with the common property.

(5) Where a plan has been accepted for deposit for consolidation purposes, the land consolidated with the land included in the strata plan is common property.

Removal of limited common property

58. The owners may, by unanimous resolution, direct the strata corporation to amend the strata plan under section 57 (1) (c). Section 57 (4) and (5) applies subject to land title procedure.

Division or consolidation of strata lots

59. (1) Where the owner of one or more strata lots, the title to each of which is registered in his name, wishes to amend the strata plan under section 57 (1) (d) or (e), he shall deposit with the registrar
(a) a plan satisfactory to the registrar and complying, so far as the registrar considers necessary, with sections 4 to 7;
(b) a certificate under the seal of the strata corporation that the strata corporation has, by special resolution, approved the amendment of the strata plan;

and

(c) schedules approved by the superintendent showing the manner in which the voting rights, unit entitlement and interest on destruction of the strata lots affected by the plan are to be apportioned among the new strata lots.

(2) On the deposit of the material, the registrar shall, if satisfied that the material is in order,

(a) assign to the plan a serial deposit number and register new indefeasible titles for the parcels shown on the plans as he considers necessary; and

(b) amend the schedules of the strata plan relating to the unit entitlement of, and interest on destruction of, the strata lots affected by the plan.

(3) The owners of strata lots in a plan of resubdivision or consolidation are, on deposit of the plan under this section, members of the strata corporation and have a right to vote in accordance with the schedule of voting rights.

(4) On deposit of a plan under this section, the strata lots in the plan are subject to the burden and have the benefit of easements affecting the strata lots in the strata plan affected.

1977-64-26, 1982-60-93, proclaimed effective August 1, 1983.

Removal of common boundary

60. A strata lot owner who owns adjoining strata lots, or a strata lot created by consolidation under section 59, may remove all or any part of a wall constituting a common boundary between the strata lots shown on the original strata plan, with the prior written approval of the strata corporation. Approval shall not be withheld unless the proposed alterations would

(a) weaken a bearing wall or column;

(b) interfere with the provision of utilities to any other strata lot or to the common property; or

(c) increase the fire hazard in the building.

1977-64-27.

Amalgamation

61. (1) Two or more strata corporations may, by special resolutions, enter into an amalgamation agreement prescribing the terms and conditions of the amalgamation, including the new unit entitlements, and the manner of carrying out the amalgamation.

(2) Section 18 does not apply to an amalgamation vote.

(3) The registrar, on receipt of the amalgamation agreement and an explanatory plan, that need not be based on a survey, showing the consolidated land, and complying, in so far as the registrar considers necessary, with sections 4 to 7 shall, if satisfied that the material is in order,

(a) assign a serial deposit number to the explanatory plan which shall, together with the existing strata plans, constitute the strata plan for the land affected;

(b) endorse on the amalgamation agreement the name of the amalgamated corporation; and

(c) alter the indefeasible titles and make any amendments to all relevant plans, including the cancellation of dividing lines, necessary to give full effect to the amalgamation agreement.

20-1/84
From the date of the deposit of the explanatory plan the amalgamating strata corporations shall be amalgamated and shall be continued as one corporation under the name endorsed on the agreement. The amalgamated corporation shall be seised of, and shall hold and possess all the property, rights and interests and shall be subject to all debts, liabilities and obligations of each amalgamating corporation, and every owner in each amalgamating corporation shall be bound by the terms of the agreement.


Owner's duty on amalgamation

62. (1) Where the special resolutions have been passed and the registrar is satisfied that the material filed with him is in order, the owner of a strata lot in an original strata plan for which a duplicate indefeasible title is not on deposit in the land title office shall, within 10 days after receipt of a written request from the registrar, deliver the duplicate to the registrar.

(2) Where the owner fails to deliver the duplicate indefeasible title to the registrar, the registrar shall amend the existing indefeasible title and amend the duplicate indefeasible title when the duplicate indefeasible title is redeposited.


Valuation for assessment and tax purposes

63. For the purposes of assessment and taxation, each strata lot, together with the share of its owner in the common property, common facilities and other taxable assets, shall be deemed to be a separate parcel of land and improvements.

1974-89-33.

Destruction of building

64. (1) Where the building is destroyed, the strata corporation may resolve, by special resolution, not to rebuild, and, in that case, it shall promptly lodge with the registrar a notice of the destruction in the form prescribed by regulation. Section 18 does not apply to a vote on the special resolution.

(2) On receipt of notice, the registrar shall, under the regulations, make an entry of the notice on the relevant strata plan.

(3) Where the entry is made, the owners become owners as tenants in common of the land included in the strata plan, including the strata lots and the assets of the strata corporation, and, notwithstanding section 12, in shares apportioned under the schedule filed under section 4 (g).

(3.1) On the entry being made, the owners of the strata lots included in the plan shall surrender to the registrar their duplicate indefeasible titles.

(3.2) The registrar, after cancelling the registrations of all strata lots comprised in the strata plan, shall register a new indefeasible title in the name of the strata corporation.

(4) The owners, by special resolution, may direct the strata corporation to transfer the assets of the strata corporation and all or part of the land included in the strata plan, including the strata lots, and sections 20 and 21 apply to the transfer.

(5) Where a special resolution is passed and a notice of destruction has been lodged with the registrar under subsection (1), in the absence of an agreement to the contrary between the strata corporation and the strata lot owner, the owners of each of the strata lots in the strata plan shall yield up possession of the strata lots to the strata corporation within 90 days after the notice is lodged with the registrar.

Where a building is destroyed, the strata corporation may apply for an order under section 65 (5).

Deemed destruction of building

65. (1) For the purposes of this Act, the building shall be considered destroyed when the owners by special resolution so resolve, or when the court is satisfied that, having regard to the rights and interests of the owners as a whole, it is just and equitable that the building be considered destroyed and makes a declaration to that effect.

(2) Where a declaration has been made by the court, the court may by order impose conditions and give directions, including directions for the payment of money, as it thinks proper to adjust, as between the strata corporation and the owners and as among the owners themselves, the effect of the declaration.

(3) Where the building is damaged but not considered to be destroyed, the court may, by order, settle a scheme, including provisions

(a) for the reinstatement in whole or in part of the building; and
(b) for transfer or conveyance of the interest of owners of strata lots that have been wholly or partially destroyed to the other owners in proportion to the unit entitlements of the strata lots of which they are the owners.

(4) Under subsection (3) the court may make the orders it considers advisable to give effect to the scheme, including orders directing

(a) the application of insurance money received by the strata corporation for damage to the building;
(b) payment of money by the strata corporation, or by owners, or by some one or more of them;
(c) amendment of the strata plan as the court thinks proper to include any enlargement of the common property; and
(d) imposition of terms and conditions it thinks proper.

(5) The court, on application, may, by order, make provision for winding up of the affairs of the strata corporation, and, by the same or subsequent order, may declare the strata corporation dissolved from a date specified in the order or may direct that a notice of destruction in the prescribed form be filed with the registrar. In that case, the strata corporation shall be deemed to have resolved by special resolution not to rebuild, and section 64 applies.

Procedure

66. (1) An application under section 65 may be made to the court by the strata corporation, an owner or a registered mortgagee of a strata lot. The court may make the order for costs it believes proper.

(2) On the application, a person who could be an applicant and an insurer who has effected insurance on the building or a part of it for damage or destruction has the right to appear.

(3) The court may vary an order made under this section.
Lease and occupancy agreements

67. (1) An owner may, subject to section 46, assign for a term certain to a lessee, and a lessee may assign for a term certain to a sublessee, on the terms contained in the lease or sublease, any of his rights, powers or obligations under this Act or bylaws.

(2) The owner shall send to the strata corporation a copy of the assignment agreement.

Lessee voting

68. Where an owner assigns to a lessee his right to vote, the strata corporation shall send notice of meetings to the lessee and all references to "owner" in this Act or bylaws for calling of meetings or voting shall be deemed to include the lessee or sublessee, as the case may be.

Assignment presumed

69. Where an owner developer or an owner gives possession of a residential strata lot to a person on the basis of a lease, sublease or assignment of lease for a term of 3 years or more, the owner developer, or the owner, shall be deemed to have assigned to the occupier all his rights, powers and obligations under this Act or bylaws.

Service of documents on corporation

70. (1) The strata corporation shall, at a place convenient for postal delivery, have continually available a receptacle suitable for postal delivery, with the name of the corporation clearly marked on it.

(2) A document may be served on the strata corporation or the strata council by post enclosed in a prepaid letter addressed to the strata corporation or the council, as the case may be, at the address shown on the strata plan or any amendment of it, or by placing it in the receptacle. If the strata corporation's address is changed, the council shall notify the registrar, who shall note the change on the strata plan.

(3) In this section "document" includes a writ of summons, summons, notice of motion, order and other legal process.

Administrator

71. (1) The strata corporation or any person having an interest in a strata lot may apply to the court for appointment of an administrator.

(2) The court may, for cause, appoint an administrator for an indefinite or fixed period on terms for remuneration or otherwise as it thinks proper.

(3) The remuneration and expenses of the administrator shall be an administrative expense within the meaning of this Act.

(4) The administrator shall, to the exclusion of the strata corporation, have the powers and duties of the strata corporation or such of them as the court orders.

(5) The administrator may delegate a power vested in him.

(6) The court may, on the application of the administrator or person referred to in subsection (1), remove or replace the administrator.

(7) The court may make the order for costs it thinks proper.
Voting

72. (1) Except where the schedule of voting rights endorsed on the strata plan of a strata corporation administering a strata plan that is not exclusively residential otherwise provides, at every meeting of the strata corporation each strata lot entitles the owner of it to only one vote for that strata lot.

(2) Powers of voting conferred under this Act may be exercised,
   (a) in the case of an owner who is an infant, by his guardian; and
   (b) in the case of an owner who is for any reason unable to control his property, by the person who is for the time being authorized by law to control that property.

(3) Where the court, on the application of the strata corporation or an owner, is satisfied that there is no person able to vote for a strata lot, the court shall, in cases where a unanimous resolution is required by this Act, and may, in any other case, appoint the Public Trustee or some other suitable person to exercise the powers of voting as the court determines.

(4) The court may order service of notice of an application on a person it thinks fit or may dispense with service.

(5) On making an appointment under subsection (3), the court may make an order it considers advisable to give effect to the appointment, including payment of costs, and may vary an order.

(6) Where, under section 18, a mortgagee has acquired the voting rights of 51% or more of the owners, or one person owns 51% or more of the strata lots and their voting rights, the exercise of those voting rights in an oppressive or unconscionable manner may be enjoined by the court on an application of a majority of the owners affected.


Applications to court

73. (1) The rules of court apply to every application to court.

(2) On an application, notice shall be served on such persons as the court orders, or the court may dispense with service.

(3) On an application, the court may give directions on all matters, including pleadings, it considers proper for the hearing of the application.


Rule against perpetuities

74. The rule against perpetuities does not apply to an agreement or document entered into under this Act or bylaws.

1974-89-41.

 Builders liens

75. (1) Notwithstanding any other Act, where an owner developer conveys a strata lot to a purchaser, no builders lien shall be filed against the strata lot, or against the purchaser's share in the common property, later than 31 days after the date the strata lot is conveyed to the purchaser.

(2) Notwithstanding any other Act, or any agreement to the contrary, a purchaser of a strata lot from an owner developer shall retain a holdback in the amount of 15% of
the gross purchase price of the strata lot, or any smaller amount fixed by regulation, for a period of 40 days after the date the strata lot is conveyed to the purchaser.

(3) The holdback is subject to a lien under the Builders Lien Act and the holdback is charged with the payment of those persons employed under the person from whom the holdback is retained.

(4) Payment of a holdback required to be retained under subsection (2) shall be made after 40 days expire unless in the meantime a claim of lien has been filed, or proceedings have been commenced to enforce a claim of lien against the holdback.

(5) On payment of the holdback amount, all liens of the person to whom the holdback is paid, and of any person employed under him for the strata lot, are discharged.

Where lien filed

76. (1) Where one or more liens have been filed against a strata lot purchased from an owner developer, the purchaser may, by interlocutory application in proceedings that have been commenced to enforce the lien, or on originating application, pay into the court having jurisdiction the smaller of the
(a) total amount of the claims filed; or
(b) full amount of the holdback under section 75 (2).

(2) Payment into court under subsection (1) discharges the purchaser from liability to the vendor or the lienholder for the claims of lien filed. The money paid into court stands in the place of the strata lot and the order shall provide that the liens be removed from the title to the strata lot.

(3) Except as provided in this Act, the Builders Lien Act applies.

PART 2

Phased strata plans

77. (1) A strata plan may be deposited in successive phases known as a "phased strata plan".

(2) The registrar shall not accept a phased strata plan for deposit unless Form E is filed with the first phase, title to the land included in the strata plan is registered in the name of the owner developer, each phase is clearly identified and each phase, when deposited for registration, complies with sections 3 (1) and 4 to 7.

(3) On deposit of each phase of the plan,
(a) the land in that phase of the plan is subdivided from the rest of the single parcel referred to in section 3 (1) and is consolidated with the land in any previously deposited phased strata plan of the same development; and
(b) notwithstanding sections 61 and 62, the constituted strata corporation is amalgamated with any previously constituted strata corporation for the same development.

Election to proceed or not

78. (1) Where an owner developer does not wish to elect whether or not he will proceed with the next phase on the date stated in Form E, or wishes to amend Form E, he may apply to the approving officer for an extension of time in which to make the election or for approval of an amendment to Form E.
(2) The approving officer shall not extend the time for more than one year from
the date stated in Form E, without the approval of the court. The strata corporation shall
be given notice of an application to court under this subsection.

(3) The owner developer shall give the strata corporation notice of an application
under subsection (1) to amend Form E.

(4) The approving officer, after considering the representations of the owner
developer and the strata corporation, if any, may approve the amendment to Form E
with or without changes, and where an amendment is approved, the owner shall file an
amended Form E with the land title office and the superintendent.

(5) Where the owner developer does not inform the strata corporation, the
approving officer and the land title office of his election not to proceed, he shall be
deemed to have elected to proceed.

1974-89-43(2,3,6); 1977-64-34; 1978-25-334.

Election not to proceed

79. (1) Where the owner developer elects not to proceed with the next phase, he
shall so inform the strata corporation and the approving officer in writing and shall also
file a notice of his election not to proceed with the land title office. The registrar shall
endorse the notice on Form E.

(2) Where the owner developer elects not to proceed any further with the
development, he, or the strata corporation constituted in respect of the completed phase
or phases, may apply to the court for an order governing the provision of the common
facilities to be developed in accordance with Form E and the application of the
proceeds of any bond, or letter of credit or other security for the provision of those
facilities.

(3) Where the owner developer elects not to proceed with the next phase of the
development and common facilities have been constructed in the existing phases, or the
strata corporation has become contractually obligated to contribute toward the
operating costs of common facilities on a separate parcel, the owner developer shall,
except as otherwise agreed between the strata corporation and the owner developer,
contribute to the common expenses attributable to the common facilities in proportion
to the unit entitlement of the strata lots of the phases not to be built. The strata
corporation may apply to the court for an order for the posting of a bond, letter of credit
or other security for the contribution by the owner developer of his share of the
common expenses.

(4) Where the owner developer does not proceed with the next phase within a
reasonable time or at a reasonable rate, the strata corporation may apply to the court for
an order that the owner developer complete the phase by a fixed date, or that he elect
to not proceed with that phase.

(5) Where the owner developer does not comply with the court order, he shall be
deemed to have elected not to proceed and the strata corporation may apply for an order
under subsection (2).

1974-89-43(4,5,7,8); 1977-64-34; 1978-25-334.

Unit entitlement in phased strata plan

80. (1) The unit entitlement of the strata lots within each phase shall be
determined in accordance with section 1 (2) and (3) but, notwithstanding that
provision, the unit entitlement of comparable strata lots may vary from phase to phase.
(2) The contribution to the common expenses of each strata lot owner in a phased development shall be calculated in the proportion that the unit entitlement of his strata lot bears to the total unit entitlement of the one or more phases of the strata plan.

(3) The owner developer shall contribute to the common expenses attributable to the common facilities in proportion to the unit entitlement of the phases not yet built as set out in Form E.

1974-89-44; 1977-64-35.

Security for common facilities

81. In a phased strata plan in which major common facilities are to be constructed in any phase other than the first phase or on a separate parcel, the approving officer shall not approve Form E unless

(a) the owner developer provides him with a statement from the owner developer's mortgagee, if any, certifying that the cost of construction of the common facilities has been included in the mortgage financing of the project and specifying the amount of money assigned to the construction of each facility;

(b) the owner developer provides him with a statement from any public authority or any other person who has required him to post a bond, letter of credit or other security to cover the cost of construction of common facilities, certifying that the bond, letter of credit or other security has been provided and specifying the amount of money assigned to the construction of each facility; or

(c) the owner posts a bond, an irrevocable letter of credit or other security for the full estimated cost of construction of that common facility, including the cost of the land as determined by the approving officer.


Security considered insufficient

82. Where the approving officer does not consider the amounts sufficient

(a) under section 81 (a), he may require the owner developer to post a bond, irrevocable letter of credit or other security for the difference between the amount assigned to the construction and the amount he considers sufficient; or

(b) under section 81 (b), he may require the owner developer to post an additional bond, irrevocable letter of credit or other security for the difference referred to in paragraph (a).


Security

83. The bond, irrevocable letter of credit or other security shall be drawn in favour of, and shall be held by, the municipality in which the land is situated, or by the regional district, if the land is not situated in a municipality, and, on the registration of the first phase, the strata corporation or a strata owner may, in its or his own name, claim against, or take proceedings on, the bond, irrevocable letter of credit or other security.

1974-89-45(3), 46(2).
Certificate about common facilities

84. In the case of a phased strata plan in which a common facility is to be constructed in conjunction with a particular phase and the owner developer wishes to deposit that phase of the strata plan for registration, the approving officer shall endorse the certificate issued under section 8 to the effect that the common facility has been satisfactorily provided for
(a) where the owner developer fulfils the requirements of sections 81 and 82;
or
(b) where the common facility has been 50% completed, as verified by the certificate of a registered architect or professional engineer, or, in its absence, by the approving officer.

Release of security

85. (1) A bond, irrevocable letter of credit or other security provided under sections 81 to 84 shall not be released unless
(a) the common facility is completed;
(b) a strata council is elected, the strata corporation and the owner developer have entered into an agreement for the completion of the common facilities and the strata corporation, by special resolution, releases the security;
(c) the court makes an order under section 79 (2) for the provision of the common facilities; or
(d) the court orders the release.

(2) Security provided under sections 81 to 84 shall be released on completion of the common facility for which it was provided, and, if the municipality or regional district, or strata corporation, refuses to release the security, the owner developer may apply to the court for an order that it be released.

Where phase has no common facilities

86. In a phased strata plan, the approving officer at the time of application for a building permit shall establish the construction requirements for the common facilities, and, if no requirements exist for the construction of the common facilities, the approving officer shall, in his discretion, establish the construction requirements he considers advisable.

Building permit

87. In a phased strata plan in which the parcels are separate, but will be consolidated pursuant to section 77 (3) at the completion of the phase, the land shall be deemed to be consolidated for the purpose of enabling a building inspector to issue a building permit in respect of any building.

Lien on phased strata plan

88. Notwithstanding any Act, in a phased strata plan a lien may be filed only against the strata lots in the phase in which the materials were supplied or the work was done.
Phased strata council members

89. (1) Notwithstanding this Act or bylaws, where a phase other than the first phase of a strata plan is deposited, the strata council shall call a general meeting of the strata corporation by the earlier of

(a) the date that 60% of the strata lots in the new phase have been conveyed by the owner developer; or

(b) 9 months after the deposit of the strata plan for the new phase.

(2) At the meeting called under subsection (1), 2 additional members of the strata council shall be elected from the purchasers of strata lots in the new phase to hold office until the next annual general meeting of the strata corporation.


Transitional phased strata plans

90. (1) Where an owner developer has, before August 15, 1974, deposited a strata plan, or a succession of strata plans, and proposes to develop further strata plans, all of which would qualify as a phased strata plan under this Act, he may convert the strata plans into a phased strata plan by

(a) amalgamating, under sections 61 and 62, the existing strata corporations that administer the strata plans to be included in the phased strata plan and complying with section 91 at the time of the amalgamation;

(b) obtaining the consent, by special resolution, of the existing strata corporations to be included in the phased strata plan;

(c) complying with the provisions of the Real Estate Act on phased strata plans; and

(d) filing the material required under sections 61 and 62, together with the other material that may be required under section 77 for the first phase of a phased strata plan.

(2) The explanatory plan filed with the material under subsection (1) (d) is the first phase of the phased strata plan.

1974-89-50.

Phased strata plan

91. Notwithstanding section 113 (1) (a), where a strata plan becomes part of a phased strata plan under section 90 of this Act, the strata corporation shall, at the time of amalgamation required by that section,

(a) amend its schedule of unit entitlement pursuant to this Act;

(b) adopt a schedule of value required by section 4 (g);

(c) adopt bylaws under sections 26 to 28, which shall be the bylaws of the phased strata plan; and

(d) file the material required by paragraphs (a), (b) and (c) with the registrar at the time the material required by sections 61 and 62 is filed.

1974-89-66(3).
PART 3
LEASEHOLD STRATA PLANS

Interpretation

92. In this Part
"federal Crown" means Her Majesty in right of Canada;
"ground lease" means a lease of land made for the purpose of this Part by the Crown,
the federal Crown, a municipality, regional district or other public authority and
registered in the books of the land title office;
"leasehold strata plan" means a strata plan deposited under this Part in which the land
included in the strata plan is subject to a ground lease;
"lessor" includes the Crown, federal Crown, municipality, regional district or other
public authority;
"owner developer" means a person who, on the date that a leasehold strata plan is
accepted by the registrar for deposit, is the registered lessee in a ground lease of the
land within the leasehold strata plan, and includes
(a) his affiliate, as defined in the Company Act; and
(b) the trustee of any right, title or interest of the owner developer in the
leasehold strata plan;
"strata lot" means a lot so shown on a leasehold strata plan;
"strata lot lease" means a lease of a strata lot arising from the conversion of a ground
lease under section 96 (1), including an assignment or transmission of it, and that
is subject to
(a) the rights and obligations, under sections 97 and 100 to 102, of the
public authority that owns the land; and
(b) the restrictions under sections 103 and 104;
"strata lot lessee" means a person registered in the books of the land title office as a
lessee under a strata lot lease whether entitled to it in his own right, in a
representative capacity or otherwise, and, for the purposes of this Part, a reference
to "owner" or "purchaser" in Part 1 includes "strata lot lessee";
"termination", in respect of a strata lot lease, means
(a) expiry of the lease without renewal; or
(b) termination of the lease under section 109 (2).
1974-89-51(3); 1977-64-38; 1978-25-334.

Application of Part 1

93. Subject to section 92, unless otherwise provided in this Part, the provisions
of Part 1 apply, with the necessary changes and so far as are applicable, to this Part but,
if there is a conflict or inconsistency between Part 1 and this Part, the provisions of this
Part prevail.
1974-89-51(1).

Deposit of leasehold strata plan

94. Notwithstanding sections 2 and 3, the registrar shall not accept for deposit a
leasehold strata plan unless
(a) the title to the land included in the leasehold strata plan is registered in
the name of the Crown, the federal Crown, a municipality, regional
district or other public authority;
(b) the person tendering the leasehold strata plan for deposit is the registered lessee in a ground lease of the land included in the leasehold strata plan;
(c) the unexpired term of the ground lease is at least 50 years after the date of the tender of the leasehold strata plan;
(d) the ground lease does not include land other than the land included in the leasehold strata plan; and
(e) the written consent of the lessor under the ground lease to registration of the leasehold strata plan is filed.

New certificates of title

95. Notwithstanding sections 2 and 3, on deposit of a leasehold strata plan, the registrar shall issue in the name of the registered owner in fee simple of the land included in the strata plan new certificates of title for the strata lots shown on the plan as may be necessary.

Conversion and leasehold charge

96. (1) The deposit of the leasehold strata plan operates as a conversion of the registered ground lease into individual leases in the name of the owner developer of the interest of the Crown or other lessor in each strata lot, including its share in the common property, at a rent, premium or other consideration and subject to the applicable terms contained in the ground lease and in the model strata lot lease attached, and to the provisions of this Act and regulations.
(2) On conversion, the registrar shall issue, in the name of the owner developer, a certificate of leasehold charge, in Form F, in respect of each strata lot lease created under subsection (1), and shall note it in the register.
(3) A certificate of leasehold charge for a strata lot and the strata lot lessee’s interest in the strata lot are subject to the obligations of the Crown, or other lessor under the strata lot lease, to purchase the strata lot lessee’s interest in the strata lot under section 97. The rights of the Crown or other lessor under the strata lot lease under sections 98 and 99 are, without special reference, subject to any further limitations imposed under sections 103 and 104 or any other enactment.
(4) Every assignee of an owner developer’s interest as strata lot lessee in a strata lot shall be deemed to have covenanted and agreed in writing with the Crown or other lessor to observe and perform all of the terms and conditions contained in the model strata lot lease, but is not, notwithstanding an agreement to the contrary, bound by, or required to observe and perform, the terms, covenants and agreements contained in the ground lease that are not also contained in the model strata lot lease.

Lessor’s right to purchase strata lot

97. (1) The Crown or other lessor shall purchase the strata lot lessee’s interest in the strata lot on the termination of the strata lot lease.
(2) The purchase price shall be arrived at as of the date of expiration of the strata lot lease, and shall be
(a) the price calculated on the basis set out in a schedule filed with the leasehold strata plan; or
(b) if none, the fair market value of the lessee's interest in the strata lot evaluated as if the lease did not expire.

(3) The Crown or other lessor under the strata lot may, if the strata corporation consents by unanimous resolution, change the basis of calculation of the purchase price of the strata lots set out in the schedule, and shall file the amended schedule with the registrar.

(4) Unless otherwise expressly provided in the strata lot lease or agreed in writing by the Crown or other lessor and the strata lot lessee, where the Crown or other lessor and the strata lot lessee have failed to agree on the purchase price under subsection (2) (b), 30 days prior to the date of termination on expiry or 30 days after the date of termination under section 109 (2), the purchase price under subsection (2) (b) shall be determined by arbitration under the Commercial Arbitration Act.


Order for sale

98. Where, on a strata lot lessee's default in observing and performing his obligations under the strata lot lease, the Crown or other lessor becomes entitled to re-enter and take possession of the strata lot, the Crown or other lessor shall not, notwithstanding any agreement or enactment to the contrary, re-enter, take possession of the strata lot or otherwise cause the strata lot lease to be terminated, but may apply to the court for an order for sale.

1977-64-42.

Procedure

99. (1) The Crown or other lessor shall give not less than 4 days' notice of an application for an order for sale to the strata lot lessee and to the owners of charges against the strata lot lessee's interest in the strata lot by serving a written notice of application and a copy of each document filed with the court in support of the application.

(2) On an application for sale, the court may declare that the strata lot lessee failed to observe and perform his obligations under the strata lot lease, specifying the nature of the default, and shall in the order provide that, if the default is not cured in 30 days from the making of the order, or such other period as the court considers proper in the circumstances, the Crown or other lessor may sell the strata lot lessee's interest in the strata lot by public auction or private sale at a price and on terms to be approved by the court.

(3) On an application for an order for sale or for an order approving a sale, the court may, by order, give directions it considers necessary for the distribution of the proceeds and the delivery of possession.

1977-64-42.

Renewal of lease

100. (1) Where, at the expiration of the term of a strata lot lease or a renewal of it the Crown or other lessor elects to renew the strata lot lease, it shall be renewed for a term of not less than 5 years.

(2) The Crown or other lessor shall in writing, at least one year prior to the expiry of the lease, advise the lessee that the Crown or other lessor has elected

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(a) to renew the lease for the renewal term specified; or
(b) not to renew the strata lot lease.

(3) Where the advice is not given under subsection (2), the Crown or other lessor shall be deemed to have elected to renew the strata lot lease for a term of 5 years.

(4) Where the election is not to renew, the Crown or other lessor shall purchase the lessee's interest in the strata lot under section 97 within 15 days after the earlier of the dates on which the purchase price is agreed to, or has been finally determined by arbitration.

1977-64-43.

Renewal terms

101. (1) A renewal of a strata lot lease shall be on the same terms as the strata lot lease, other than for rent.

(2) Unless otherwise expressly provided in the lease, or otherwise agreed to in writing between the lessor and the lessee, the rent for the renewal period shall be determined by agreement between the Crown or other lessor and the strata lot lessee by a date not later than the beginning of the renewal period, and, failing agreement, shall be determined by arbitration.

(3) Where arbitration is required, the Arbitration Act applies. The rent shall be that share of the current market rental value of the land included in the strata plan, excluding all buildings and improvements, apportioned to the strata lot in accordance with the schedule filed under section 4 (g).

1977-64-43.

Ineffective renewal election

102. An election not to grant renewals that relates to fewer than all, but more than 1/3, of the lots shown on the strata plan is ineffective unless before delivery of the advice under section 100 (2) (b)

(a) the Crown or other lessor has given to all strata lot lessees a written notice specifying the strata lot leases not to be renewed and the strata lot leases to be renewed; and

(b) each of the lessees whose strata lot leases are to be renewed consents in writing to more than 1/3 of the strata lot leases not being renewed.

1977-64-43.

Restrictions on sale

103. (1) The Crown, acting through the minister, or any other lessor, may impose restrictions on the lease, assignment or occupancy of the strata lots included in a leasehold strata plan.

(2) Where restrictions are imposed, the restrictions shall

(a) be filed, as a schedule, with the leasehold strata plan and come into effect on the registration of the plan; and

(b) have no effect unless so filed.

(3) On filing, the restrictions bind the strata corporation and the lessee, sublessee or assignee of the strata lot to the same extent as if the schedule had been sealed by the strata corporation and signed by each lessee, sublessee or assignee, and contained covenants on the part of the strata corporation and each lessee, sublessee or assignee with the Crown or other lessor and with every other lessee, sublessee or assignee to comply in all respects with the schedule.

1974-89-56(1,2).
Amended restrictions

104. (1) Subject to section 97 (3), the Crown, acting through the minister, or any other lessor, may on its own, or on the application of the strata corporation following a special resolution, add to, alter or repeal any of the restrictions, and shall file the amended schedule with the registrar.

(2) A lessor under a ground lease, other than the Crown, may amend the schedule of restrictions only with the approval of the Lieutenant Governor in Council.

(3) Alteration or repeal of the restrictions on occupancy of the strata lot does not affect those persons who were strata lot lessees immediately prior to the amendment, but affects new strata lot lessees on the sublease or assignment of the strata lot lease.

1974-89-56(3,4,5,6); 1977-64-44.

Offence

105. (1) Every lessor, assignor, lessee, assignee or other person who participates in the lease, assignment or occupancy of a strata lot in contravention of the restrictions imposed under section 97 or 103, and who knew or ought to have known of the restrictions, is guilty of an offence and liable, on conviction, to a fine of not more than $2,000, or to imprisonment for a term of not more than one year, or to both.

(2) In a prosecution under this section, the court may order that any portion of the price or other consideration attributable to failure to comply with the restrictions is payable to the Crown or other lessor under the ground lease.

1974-89-57.

Duties of strata corporation

106. The strata corporation shall, at the request of the Crown or other lessor, enter into an agreement with the Crown or other lessor in which the strata corporation covenants to

(a) obtain and maintain insurance and pay premiums on behalf of the strata lot lessees to the extent that they are required to do so under their leases;

(b) repair and maintain the common property, common facilities and assets of the strata corporation on behalf of the strata lot lessees to the extent and standard that the strata lot lessees are required so to do under the strata lot leases; and

(c) require the strata lot lessees to observe and perform the covenants contained in the strata lot leases requiring the strata lot lessees to observe and comply with

(i) the bylaws of the strata corporation;

(ii) this Act and regulations;

(iii) restrictions imposed by the Crown or other lessor under sections 103 and 104; and

(iv) the Acts or regulations respecting, or the lawful requirements of, a governmental utility or association of fire insurance underwriters affecting or respecting the use or occupancy of the strata lots by the strata lot lessees.

1977-64-46.
Deemed destruction of buildings

107. (1) On termination of all of the strata lot leases, the buildings shall be treated as if destroyed, and the strata council shall distribute the assets of the strata corporation to the former owners in shares apportioned in accordance with the schedule filed under section 4, and sections 65 and 66 do not apply.

(2) On termination under subsection (1), the strata corporation shall promptly lodge with the registrar a notice of destruction.

1977-64-47.

Destruction of building

108. (1) When a building is destroyed, section 64 (1) and (2) applies to this Part.

(2) If the strata corporation resolves not to rebuild the building, the interest of the strata lot lessee in the land shall revert to the Crown or other lessor.

(3) Section 64 (3) and (4) applies with the necessary changes and so far as applicable to this Part.


Deemed destruction of building

109. (1) Section 65 (1) and (2) does not apply to this Part unless the building has been damaged or destroyed to an extent in excess of 1/3 of its value.

(2) If the building is deemed to be destroyed, the strata lot lease shall be deemed to have terminated and the Crown or other lessor shall purchase the interest of the strata lot lessees in their strata lots as provided for in section 97 (2).


PART 4
GENERAL

Valuation for tax purposes

110. For the purposes of assessment and taxation, each strata lot, together with its share in the common property, the common facilities and any taxable assets of the strata corporation, shall be deemed to be a separate parcel of land and improvements.


Regulations

111. (1) The Lieutenant Governor in Council may make regulations and, without restricting the generality of the foregoing, may make regulations

(a) for fees for any procedure permitted or required to be done under this Act;
(b) respecting the procedure, or alteration of any procedure, or the exercise of any power, right or duty, whether statutory or otherwise, under any other Act, to the extent necessary to give full force and effect to this Act;
(c) for notice of destruction of buildings under section 64 or 107;
(d) defining any word or expression not defined in this Act;
(e) for the orderly transition of strata plans from the former Act to this Act; and
(f) respecting the cancellation of bare land strata plans and, without restricting the generality of the foregoing, may
   (i) establish the circumstances under which a bare land strata plan may be cancelled,
(ii) establish the procedures to be followed in the cancellation of a bare land strata plan, and
(iii) limit the application of the regulations to bare land strata plans that are created before a prescribed date.

(2) For surrendered land, the regulations may provide for
(a) the registration under the land title legislation of leases of prescribed land where the land has been surrendered under the Indian Act (Canada) and is vested in Her Majesty the Queen in right of Canada;
(b) the subdivision of all or part of the surrendered land into strata lots by the deposit in a land title office of leasehold strata plans;
(c) strata corporations with respect to the surrendered land, including the composition of the strata corporations; and
(d) related matters, including the rights and obligations of any person or strata corporation.

(3) For the purposes of subsection (2), the regulations may
(a) exempt all or part of the surrendered land, leases, any person or strata corporation from the application of all or part of this Act; and
(b) enact additional provisions respecting the surrendered land, leases, any person or strata corporation notwithstanding that the additional provisions may be wholly or partially inconsistent with this Act.

Other Acts

112. (1) For the purposes of the Land (Spouse Protection) Act, a strata lot is deemed to be land on which a building is situated.

(2) The plans cancellation provisions of the Land Title Act do not apply to a strata plan deposited under this Act.

Transitional

113. (1) Where a strata plan has been deposited with the registrar under the Strata Titles Act, S. B.C. 1966, c. 46, herein referred to as the “former Act”, the following provisions apply:

(a) for the purposes of this Act, “unit entitlement”, unless it is varied pursuant to paragraph (c), (d) and (e), means the unit entitlement of the strata lots as established by section 4 (1) (f) of the former Act, in so far as it determines

(i) the quantum of the undivided share of the owner in the common property, including the quantum of such share on destruction of the building; and

(ii) the proportion payable by each owner of contributions levied in respect of common expenses;

(b) the existing bylaws remain in full force and effect until altered or repealed, but an alteration or repeal shall be carried out under this Act;

(c) notwithstanding paragraph (a), a strata corporation may, by special resolution, amend its schedule of unit entitlement, and, if it does not have a schedule of interest on destruction, it shall at the same time adopt such a schedule;
(d) the schedules shall be submitted to the superintendent for acceptance, based on the criteria set out in sections 1 (2) to (6) and 4 (g) of this Act, and, on acceptance of the schedules, the strata corporation shall deposit them in the appropriate land title office;

(e) the registrar shall amend the strata plan by deleting the previous schedules and substituting those filed under paragraph (d).

(2) Where an owner developer who has deposited a strata plan under the former Act has not sold or entered into any agreement to sell any of the strata lots in the strata plan, he may elect to amend the prospectus filed under the Real Estate Act, if any, and the strata plan to conform to the Real Estate Act and this Act, and, on the approval of the superintendent and the registrar, the strata plan may be amended accordingly.


Approval of support structure plans

114. (1) For the purpose of this section,"strata lot" means a strata lot comprised in a support structure plan;

"support structure plan" means a strata plan that does not define the boundaries of the strata lots by reference primarily to floors, walls and ceilings.

(2) A registrar shall not accept for deposit a support structure plan unless it has first been approved by an approving officer and it otherwise complies with section 3 (1).

(3) The provisions of the land title legislation applicable to the approval of subdivision plans apply to this section, and for that purpose

(a) all references in them to "plan", "plan of subdivision" or "subdivision plan" shall be deemed to include a support structure plan; and

(b) the creation of strata lots by the deposit of a support structure plan shall be deemed to constitute a subdivision of land.

1977-43-1; repealed 1977-64-57; to be proclaimed.

PART 5

Bylaws

Duties of owner

115. An owner shall

(a) permit the strata corporation and its agents, at all reasonable times on notice, except in case of emergency, when no notice is required, to enter his strata lot for the purpose of inspecting the same and maintaining, repairing or renewing pipes, wires, cables and ducts for the time being existing in the strata lot and capable of being used in connection with the enjoyment of any other strata lot or common property, or for the purpose of maintaining, repairing or renewing common property, common facilities or other assets of the strata corporation, or for the purpose of ensuring that the bylaws are being observed;

(b) promptly carry out all work that may be ordered by any competent public or local authority in respect of his strata lot other than work for the benefit of the building generally, and pay all rates, taxes, charges, outgoings and assessments that may be payable in respect of his strata lot;

(c) repair and maintain his strata lot, including windows and doors, and areas allocated to his exclusive use, and keep them in a state of good repair, reasonable wear and tear and damage by fire, storm, tempest or act of God excepted.
(d) use and enjoy the common property, common facilities or other assets of
the strata corporation in a manner that will not unreasonably interfere
with their use and enjoyment by other owners, their families or visitors;
(e) not use his lot, or permit the same to be used, in a manner or for a
purpose that will cause a nuisance or hazard to any occupier of a lot,
whether an owner or not, or his family;
(f) notify the strata corporation promptly on any change of ownership or of
any mortgage or other dealing in connection with his strata lot;
(g) comply strictly with these bylaws, and all other bylaws of the strata
corporation, and with rules and regulations adopted from time to time; and
(h) receive the written permission of the strata council before undertaking
alterations to the exterior or structure of the strata lot, but permission
shall not be unreasonably withheld.

Duties of strata corporation

116. The strata corporation shall
(a) control, manage and administer the common property, common facilities
or other assets of the corporation for the benefit of all owners;
(b) keep in a state of good and serviceable repair and properly maintain the
fixtures and fittings, including the elevators, swimming pool and
recreational facilities, if any, and other apparatus and equipment used in
connection with the common property, common facilities or other assets
of the corporation;
(c) maintain all common areas, both internal and external, including lawns,
gardens, parking and storage areas, public halls and lobbies;
(d) maintain and repair, including renewal where reasonably necessary, pipes,
wires, cables, chutes and ducts for the time being existing in the
parcel and capable of being used in connection with the enjoyment of
more than one strata lot or common property;
(e) on the written request of an owner or mortgagee of a strata lot, produce
to him or a person authorized in writing by him the insurance policies
effectived by the corporation and the receipts for the last premiums;
(f) maintain and repair the exterior of the buildings, excluding windows,
doors, balconies and patios included in a strata lot, including the
decorating of the whole of the exterior of the buildings;
(g) collect and receive all contributions toward the common expenses paid
by the owners and deposit the same with a savings institution; and
(h) pay all sums of money properly required to be paid on account of all
services, supplies and assessments pertaining to, or for the benefit of, the
corporation.

Powers of strata corporation

117. The strata corporation may
(a) purchase, hire or otherwise acquire personal property for use by owners
in connection with their enjoyment of common property, common
facilities or other assets of the corporation;
(b) borrow money required by it in the performance of its duties or the exercise of its powers;
(c) secure the repayment of money borrowed by it, and the payment of interest, by negotiable instrument or mortgage of unpaid contributions, whether levied or not, or mortgage of any property vested in it, or by combination of those means;
(d) invest as it may determine in separate accounts money in the fund for administrative expenses, or in the contingency reserve fund;
(e) make an agreement with an owner or occupier of a strata lot for the provision of amenities or services by it to the strata lot or to the owner or occupier;
(f) grant an owner the right to exclusive use and enjoyment of common property, or special privileges for them, the grant to be determinable on reasonable notice, unless the strata corporation by unanimous resolution otherwise resolves;
(g) designate an area as limited common property and specify the strata lots that are to have the use of the limited common property;
(h) make rules and regulations it considers necessary or desirable from time to time in relation to the enjoyment, safety and cleanliness of the common property, common facilities or other assets of the corporation;
(i) do all things necessary for the enforcement of the bylaws and the rules and regulations of the strata corporation, and for the control, management and administration of the common property, common facilities or other assets of the strata corporation, generally, including removing privileges in the use of certain facilities, or fixing and collecting fines for contravention of the bylaws, rules or regulations;
(j) subject to this Act, determine the levy for the contingency reserve fund which shall be not less than 5% of the total annual budget, until the reserve reaches an amount that the strata council considers sufficient having regard to the type of buildings in the strata plan, and thereafter raise further amounts of replacements of funds from time to time and over a period of time as the strata council thinks fit; and
(k) join any organization serving the interests of strata corporations and assess the membership fee in the organization as part of the common expenses.


Strata council

118. (1) The powers and duties of the strata corporation shall, subject to any restriction imposed or direction given at a general meeting, be exercised and performed by the council of the strata corporation.
(2) The owner developer shall exercise the powers and duties of the strata council until a council is elected by the owners.
(3) A council shall be elected at the first annual general meeting of the owners called by the owner developer under section 123 (1).
(4) The council shall be elected by and from among the owners and shall consist of not less than 3 or more than 7 members, except as provided in section 89. Where there are less than 4 strata lots, or less than 4 owners, the council shall consist of all owners.
(5) Except where the council consists of all owners, where a strata lot is owned by more than one person, only one owner of the strata lot shall be a member of the council at any one time.

(6) At each annual general meeting of the strata corporation all the members of the council shall retire from office and the strata corporation shall elect a new council. A retiring member of the council is eligible for re-election.

1974-89-1st Sch.-4 to 9; 1975-74-29; 1977-64-52(b).

Vacancies, quorum, etc.

119. (1) Except where the council consists of all owners, the strata corporation may, by resolution at an extraordinary general meeting, remove for cause a member of the council before expiry of his term of office and appoint another owner in his place, to hold office until the next annual general meeting.

(2) A vacancy on the council may be filled by the remaining members of the council.

(3) Except where there is only one owner, a quorum of the council is 2 where the council consists of 4 or less members, 3 where it consists of 5 or 6 members and 4 where it consists of 7 members.


Officers and meetings

120. (1) At the first meeting of the council held after each annual general meeting of the strata corporation, the council shall elect from among its members a chairman and vice chairman, who shall hold office until the conclusion of the next annual general meeting of the strata corporation or until their successors are elected or appointed.

(2) The chairman of the council shall have a casting vote in addition to his original vote.

(3) Where the chairman is absent from any meeting of the council, or vacates the chair during the course of a meeting, the vice chairman shall act as the chairman and have all the duties and powers of the chairman while so acting.

(4) In the absence of both the chairman and the vice chairman, the members present shall from among themselves appoint a chairman for that meeting, who shall have all the duties and powers of the chairman while so acting.

(5) At meetings of the council all matters shall be determined by simple majority vote.

1974-89-1st Sch.-13 to 17.

Council powers

121. The council may

(a) meet together for the conduct of business, adjourn and otherwise regulate its meetings as it thinks fit, and it shall meet when any member gives the other members not less than 7 days' notice of a meeting proposed by him, specifying the reason for calling the meeting, unless the other members agree to waive the notice;

(b) employ for and on behalf of the strata corporation agents and employees as it thinks proper for the control, management and administration of the common property, common facilities or other assets of the corporation,
and the exercise and performance of the powers and duties of the corporation; and
(c) subject to any restriction imposed or direction given at a general meeting, delegate to one or more of its members, or to a member or committee of members of the strata corporation, or to its manager, those of its powers and duties it thinks proper, and at any time revoke a delegation.

1974-89-1st Sch.-18.

Council duties

122. (1) The council shall keep, in one location, or in the possession of one person, and shall make available on request to an owner or a person authorized by him,
(a) a copy of this Act and of changes in the bylaws under Part 5;
(b) a copy of special or unanimous resolutions;
(c) a copy of all the legal agreements to which the corporation is a party, including management contracts, insurance policies, insurance trustee agreements, deeds, agreements for sale, leases, licences, easements or rights of way;
(d) a register of the members of the council;
(e) a register of the strata lot owners, setting out the strata lot number, the name of the owner, the unit entitlement, the name and address of any mortgagee who has notified the strata corporation, the name of any tenant or lessee, and a notation of any assignment by the owner to the lessee;
(f) the annual budget for each year; and
(g) minutes of all general meetings and of all council meetings.

(2) The council shall
(a) keep minutes of its proceedings;
(b) cause minutes to be kept of general meetings;
(c) cause proper books of account to be kept in respect of all sums of money received and expended by it and the matters in respect of which receipt and expenditure take place;
(d) prepare proper accounts relating to all money of the corporation, and the income and expenditure of it, for each annual general meeting; and
(e) on application of an owner or mortgagee, or a person authorized in writing by him, make the books of account available for inspection at all reasonable times.

(3) All acts done in good faith by the council are, notwithstanding it is afterwards discovered that there was some defect in the appointment or continuance in office of a member of the council, as valid as if the member had been duly appointed or had duly continued in office.

(4) A member of a strata council is not personally liable for an act done in good faith in carrying out his duties as a member of the council.

General meetings

123. (1) The first annual general meeting shall be called by the owner developer and the meeting shall be held on the earlier of the date on which 60% of the strata lots have been conveyed by him, or a date 9 months after registration of the strata plan.

(2) Subsequent annual general meetings shall be held once in each year, and not more than 13 months shall elapse between one annual general meeting and the next.

(3) General meetings other than the annual general meetings shall be called extraordinary general meetings.

(4) The strata council may, whenever it thinks proper, and shall on a requisition in writing by owners or mortgagees of 25% of the strata lots, within 2 weeks after the requisition, convene an extraordinary general meeting.

(5) Seven days' notice of every general meeting specifying the place, date and hour of the meeting, and in case of special business the general nature of that business, shall be given to all owners and first mortgagees who have notified their interests to the strata corporation. Accidental omission to give notice to an owner or to a first mortgagee or failure to receive the notice by an owner does not invalidate proceedings at the meeting.

Procedure

124. (1) All business shall be deemed special that is transacted at an annual general meeting, with the exception of the consideration of accounts and election of members to the strata council, or at an extraordinary general meeting.

(2) Save as in these bylaws otherwise provided, business shall not be transacted at a general meeting unless a quorum of persons entitled to vote is present at the time when the meeting proceeds to business.

(3) One third of the persons entitled to vote present in person or by proxy constitutes a quorum.

(4) If within 1/2 hour from the time appointed for a general meeting a quorum is not present, the meeting stands adjourned to the same day in the next week at the same place and time. If at the adjourned meeting a quorum is not present within 1/2 hour from the time appointed for the meeting, the persons entitled to vote present constitute a quorum.

(5) The chairman of the council shall be the chairman of all general meetings. In his absence from the meeting or in case he vacates the chair, the vice chairman of the council shall act as chairman. In other cases, the meeting shall appoint a chairman.

(6) The order of business at general meetings, and as far as is appropriate for extraordinary general meetings, shall be

(a) electing the chairman of the meeting, if necessary;
(b) calling the roll, certifying proxies and issuing a voting card for each strata lot represented at the meeting;
(c) filing proof of notice of meeting or waiver of notice;
(d) reading and disposing of any unapproved minutes;
(e) receiving reports of committees;
(f) considering the accounts;
(g) electing a strata council, if necessary;
Voting at meetings

125. (1) At a general meeting a resolution by the vote of the meeting shall be decided on a show of hands, unless a poll is requested by an owner present in person or by proxy. A request for a poll may be withdrawn.

(2) Unless a poll is requested, a declaration by the chairman that a resolution has, on the show of hands, been carried is conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against the resolution.

(3) A poll, if demanded, shall be taken in whatever manner the chairman thinks proper, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was requested.

(4) In the case of equality in the votes, whether on a show of hands or on a poll, the chairman of the meeting is entitled to a casting vote in addition to his original vote.

(5) On a show of hands, an owner shall indicate his vote by showing his voting card. On a show of hands or on a poll, votes may be given either personally or by proxy.

(6) Except in cases where, under this Act, a unanimous resolution is required, an owner is not entitled to vote at a general meeting unless all contributions payable for his strata lot have been paid.

(7) Where owners are entitled to successive interests in a lot, the owner entitled to the first interest is alone entitled to vote, whether on a show of hands or a poll.

(8) An owner who is a trustee is entitled to exercise the vote for the lot. The persons beneficially interested may not vote.

Proxies

126. (1) An instrument appointing a proxy shall be in writing signed by the appointer or his attorney, and may be either general or for a particular meeting.

(2) A proxy need not be an owner.

(3) Notwithstanding the provisions of these bylaws on appointment of a proxy, where the owner's interest is subject to a registered mortgage and where the mortgage provides that the power of vote conferred on an owner under this Act may be exercised by the mortgagee and where the mortgagee has given written notice of his mortgage to the corporation, no instrument or proxy shall be necessary to give the mortgagee the power to vote. The mortgagee shall indicate his presence at the calling of the roll and he, rather than the owner, shall be issued a voting card.

Violation of bylaws

127. (1) An infraction or violation of these bylaws or any rules and regulations established under them on the part of an owner, his employees, agents, invitees or tenants may be corrected, remedied or cured by the strata corporation. Any costs or expense so incurred by the corporation shall be charged to that owner and shall be added to and become a part of the assessment of that owner for the month next
following the date on which the costs or expense are incurred, but not necessarily paid by the corporation, and shall become due and payable on the date of payment of the monthly assessment.

(2) The strata corporation may recover from an owner by an action for debt in a court of competent jurisdiction money which the strata corporation is required to expend as a result of an act or omission by the owner, his employees, agents, invitees or tenants, or an infraction or violation of these bylaws or any rules or regulations established under them.

1974-89-1st Sch.-46.47.

Common expenses

128. (1) The strata lot owner's contribution to the common expenses of the strata corporation shall be levied in accordance with this bylaw.

(2) Where a strata plan consists of more than one type of strata lot, the common expenses shall be apportioned in the following manner:

(a) common expenses attributable to one or more type of strata lot shall be allocated to that type of strata lot and shall be borne by the owners of that type of strata lot in the proportion that the unit entitlement of that strata lot bears to the aggregate unit entitlement of all types of strata lots concerned;

(b) common expenses not attributable to a particular type or types of strata lot shall be allocated to all strata lots and shall be borne by the owners in proportion to the unit entitlement of their strata lots.

(3) Where a strata plan includes limited common property, expenses attributable to the limited common property which would not have been expended if the area had not been designated as limited common property shall be borne by the owners of the strata lots entitled to use the limited common property in proportion to the unit entitlement of their strata lots.

(4) The owner developer shall cause to be prepared an interim budget of anticipated common expenses for the first 9 month period following registration of the strata plan, and the budget shall be delivered to each purchaser.

(5) For the period from the date on which the strata plan is registered until the earlier of the date on which the first strata lot is occupied, or the date on which the first strata lot is conveyed to a purchaser, the owner developer shall pay the actual common expenses.

(6) For the period from the earlier of the date on which the first strata lot is occupied, or the date on which the first strata lot is conveyed to a purchaser until the first annual budget is approved at the first annual general meeting, the owners, including the owner developer, shall pay to the strata corporation their proportionate share of the estimated monthly common expenses in accordance with the interim budget prepared under subsection (4).

(7) If the actual common expenses during the period referred to in subsection (6) exceed the estimated common expenses for that period, the owner developer shall pay the excess.

(8) At the first annual general meeting, the strata corporation shall cause to be prepared a budget for a period commencing on the date of the first annual general meeting and ending on the first anniversary of the last day of the month during which the first annual general meeting is held. After that, all owners, including the owner
developer, shall, subject to subsections (2) and (3), pay a monthly assessment based on that budget determined in accordance with their unit entitlements.

(9) Where, at the first annual general meeting, the budget shows that the estimated common expenses as shown on the interim budget exceeded the actual common expenses, the owners, including the owner developer, shall receive from the strata corporation a rebate of their contribution to the common expenses, based on the unit entitlement of the strata lots for which their contribution was paid, and the period of time during which their contribution was paid.

(10) At each annual general meeting subsequent to the first annual general meeting, the strata corporation shall prepare an annual budget for the following 12 month period and, after that, all owners shall, subject to subsections (2) and (3), pay a monthly assessment in accordance with their unit entitlement.


Notices

129. (1) Unless otherwise specifically stated in these bylaws, delivery of any notice required to be given under this Act or under these bylaws shall be well and sufficiently given if mailed to the owner at the address of his strata lot and if left with him or some adult person at that address.

(2) A notice given by post shall be deemed to have been given 48 hours after it is posted.

(3) An owner may at any time in writing advise the corporation of a change of address at which notice shall be given, and thereafter the address specified shall be deemed to be the address of the owner for the giving of notices.

(4) The word "notice" shall include any request, statement or other writing required or permitted to be given by the strata corporation to the owner of the strata lot.

1974-89-1st Sch.-51 to 54.

Corporate common seal

130. The strata corporation shall have a common seal, which shall not be used except by authority of the council previously given and in the presence of the members of the strata council or at least two members of it, who shall sign every instrument to which the seal is affixed. Where there is only one member of the strata corporation, his signature is sufficient for the purpose of this section, and, if the only member is a corporation, the signature of the appointed representative on the strata council shall be sufficient for the purpose of this section.

1974-89-1st Sch.-55.

Prohibitions

131. (1) An owner shall not
(a) use his strata lot for any purpose which may be illegal or injurious to the reputation of the building;
(b) make undue noise in or about any strata lot or common property; or
(c) keep any animals on his strata lot or the common property after notice in that behalf from the council.

(2) When the purpose for which a strata lot is intended to be used is shown expressly or by necessary implication on or by the registered strata plan, an owner shall not use his strata lot for any other purpose, or permit it to be so used.

1974-89-2nd Sch.-1.2.
Promotion

132. During the time that the owner developer of the strata corporation is the first owner of any units, he shall have the right to maintain any unit or units, whether owned or leased by him, as a display unit, and to carry on all sales functions he considers necessary in order to enable him to sell the units.

1974-89-2nd Sch.-3.

PART 6

PROCLAMATION

Commencement

133. (1) Section 114 is repealed.
     (2) Subsection (1) comes into force by regulation of the Lieutenant Governor in Council.


[Note: see also draft uniform Strata Titles Act to be found as stated in the Users Guide to Statutes in the beginning of this volume.]

SCHEDULE

RESTRICTIONS

Leasehold Strata Plan No. . . . . . .

1. The purchase price of each strata lot under section 97 of the Condominium Act shall be calculated as follows:

2. The restrictions imposed on the lease, assignment or occupancy of the strata lots under sections 103 and 104 of the Condominium Act are as follows:

FORMS

FORM A

Certificate of Full Payment

Strata Corporation No. hereby certifies under section 11 (2) of the Condominium Act that no money is owing to it in connection with Strata Lot No. [legal description].

Dated [month, day], 19 .

Member of Strata Council or Manager.

FORM B

Certificate of Default in Payment

Strata Corporation No. hereby certifies that the owner of the strata lot described below is in default in the payment of his share of the common expenses referred to in section 37 of the Condominium Act:

[legal description of the strata lot]
2. That the amount owing as of [month, day], 19, is $ , and that Strata Corporation No. claims a charge against the title to the strata lot under section 37 of the Condominium Act.

Dated [month, day], 19.

Member of Strata Council or Manager.

FORM C
CERTIFICATE OF PAYMENT

Strata Corporation No. hereby certifies
1. That it has received payment of the amount owing under its charge registered under No. against the title to the strata lot described as
[legal description of the strata lot]
2. That the amount owing was paid on [month, day], 19, and the Strata Corporation No. hereby releases its charge against the strata lot.

Dated [month, day], 19.

Member of Strata Council or Manager.

FORM D
TENANT’S UNDERTAKING

(Name of Strata Corporation)

To the Owners, Strata Plan No. . . . . . . . . . . . .
Re: Strata Lot No. . . . . . . . . . .

I have agreed (or am about to agree) with the owner of this strata lot to rent it from month to month (for a period of years) from [month, day], 19, and do jointly and severally covenant with you that I shall at all times during the period of my tenancy (lease) comply with the provisions of the Condominium Act, as amended from time to time, in so far as they affect me as tenant and occupier of the strata lot, and the provisions of the bylaws and the rules and regulations of the strata corporation as adopted from time to time in so far as they affect me as tenant and occupier of the strata lot.

Witness:

(Name)

(Address)

(Occupation)

The address to which any notices to the registered owner of the strata lot shall be delivered is [address]
FORM E

DECLARATION OF INTENTION TO CREATE A STRATA PLAN
BY PHASED DEVELOPMENT

1. I, declare that I intend to create a strata plan by way of phased development of the following land which I own or on which I hold a right to purchase:

2. That the plan of development is as follows:

   (a) a schedule setting out the number of phases and specifying any common facility to be developed in conjunction with a particular phase;
   (b) a sketch plan showing:
      (i) all the land to be included in the phased strata plan;
      (ii) the present parcel boundaries;
      (iii) the approximate boundaries of each phase; and
      (iv) the approximate location of the common facilities;
   (c) a schedule setting out the estimated date of commencement of construction and completion of construction for each phase;
   (d) a statement of the unit entitlement of each phase and the total unit entitlement of the completed development; and
   (e) a statement of the maximum number of units and general type of residence or other structure to be built in each phase.

3. That I shall elect whether or not to proceed with each phase on or by the following dates:

<table>
<thead>
<tr>
<th>Phase</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phase 1</td>
<td></td>
</tr>
<tr>
<td>Phase 2</td>
<td></td>
</tr>
</tbody>
</table>

Approving Officer

FORM F

CERTIFICATE OF LEASEHOLD CHARGE

Land title office, British Columbia

This is to certify that the undermentioned registered lessee is, subject to

(a) the provisions of the Condominium Act;

(b) the charges, liens and interest noted by endorsement on this certificate; and

(c) the conditions, exceptions, reservations and restrictions set out on this certificate,

entitled to a charge by way of lease registered by endorsement under No. on the indefeasible title to land situated in British Columbia, and more particularly described below.

Registered owner of charge by way of lease:

Application for registration received:

Description of land:

<table>
<thead>
<tr>
<th>Nature of Charge, Number, Date and Time of Application</th>
<th>Registered Owner of Charge</th>
<th>Remarks</th>
</tr>
</thead>
</table>

Signed and sealed at British Columbia, on [month, day], 19

Registrar

CHAPTER C170

THE CONDOMINIUM ACT.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Definitions.

In this Act,

(a) "architect" means a person who under The Architects Act is authorized to practice as an architect in the province;
(b) "board" means the board of directors of a corporation;
(c) "buildings" means the buildings included in a property;
(d) "by-law" means a by-law of a corporation;
(e) "claim" includes a right, title, interest, encumbrance, or demand of any kind affecting land, but does not include the interest of an owner in his unit and common interest;
(f) "common elements" means all the property except the units;
(g) "common expenses" means the expenses of a performance of the objects and duties of a corporation and any expenses specified as common expenses in a declaration or in section 16;
(h) "common interest" means the interest in the common elements appurtenant to a unit;
(i) "corporation" means a corporation incorporated under this Act;
(j) "court" means the Court of Queen's Bench;
(k) "declaration" means a declaration to which reference is made in section 16, and includes any amendments thereto;
(l) "district registrar" means a district registrar appointed under The Real Property Act;
(m) "encumbrance" means a claim that secures the payment of money or the performance of any other obligation and includes a charge, a mortgage and a lien;
(n) "land" means land, whether leasehold or in fee simple, under The Real Property Act;
(o) "new system" means the system of registration provided under The Real Property Act;
(p) "owner" means the owner of the freehold estate or estates or leasehold estates in a unit and common interest, but does not include a mortgagee unless the mortgagee is in possession;
(q) "plan" means the plan to which reference is made in section 6, and includes any amendments thereto;
(r) "property" means the land and interests appurtenant to the land described in the plan or subsequently added to the common elements;
s) "registered" means registered under The Real Property Act;
t) "Registrar General" means the registrar general under The Real Property Act;
u) "surveyor" means a person authorized to practice, and registered, as a land surveyor under The Land Surveyors Act;
v) "unit" means a part of the land included in the plan and designated as a unit by the plan, and comprises the space enclosed by its boundaries and all the material parts of the land within this space at the time the declaration and plan are registered.

S.M. 1968, c. 10, s. 1.
2(1) Words and expressions used in this Act, and not defined in section 1, have the same meanings as assigned to them under The Real Property Act.

Ownership of space.

2(2) For the purposes of this Act, the ownership of, or leasehold interest in, land includes the ownership of, or leasehold interest in, space.

S.M., 1968, c. 10, s. 2.

Objects.

3 The objects of this Act are to facilitate the division of land into parts that are to be owned or leased individually, and parts that are to be owned or leased in common, and to provide for the use and management of such properties and to expedite dealings therewith; and the Act shall be construed in a manner to give the greatest effect to these objects.

S.M., 1968, c. 10, s. 3.

New system land only.

4(1) A property shall comprise only new system land, and interests, if any, appurtenant to that land; and all the land affected thereby shall be within the same land titles district.

Who may register declaration.

4(2) A declaration and plan may be registered by or on behalf of the owner in fee simple, or the lessee, of the land described in the plan.

Effect of registration.

4(3) Upon registration of a declaration and plan, the land and the interest appurtenant to the land described in the plan are governed by this Act; and the district registrar shall

(a) issue a certificate of title in the name of the corporation as hereinafter provided, which shall set forth that the certificate of title is issued pursuant to The Condominium Act;
(b) issue a separate certificate of title in the name of each owner for each unit described in the plan which shall set forth the proportion of the common interest appurtenant to the unit, and that the certificate of title is issued pursuant to The Condominium Act;
(c) keep an index to be known as: "Condominium Corporations Index";
(d) keep a register to be known as: "Condominium Register" in which declarations, plans, by-laws, notices of termination and other instruments respecting land governed by this Act shall be registered, and the registration recorded.

S.M., 1968, c. 10, s. 4.

Contents of declaration.

5(1) A declaration shall not be registered unless

(a) title to the land described therein is registered under The Real Property Act;
(b) it is executed by the owner or lessee of the property;
(c) it has been approved as to form by the district registrar;
(d) it contains the legal description of the land that is the subject of the declaration;
(e) it contains the statement of intention that the land or the leasehold interest therein, and interests appurtenant to the land described in the plan be governed by this Act;
(f) it contains the consent of all persons having registered encumbrances against the land or interests appurtenant to the land described in the plan;

(g) it contains a statement expressed in percentages allocated to the units of the proportions in which the owners are to contribute to the common expenses and to share in the common interests;

(h) it contains a statement expressed in percentages allocated to the units, of the proportions in which the owners are to have voting rights in the corporation; and

(i) it contains an address for service.

Further contents of declaration.

5(2) In addition to the matters mentioned in subsection (1), a declaration may contain

(a) a specification of common expenses; or

(b) a specification of any parts of the common elements that are to be used by the owners of one or more designated units and not by all the owners; or

(c) subject to subsection (3), provisions respecting the occupation and use of the units and common elements; or

(d) subject to subsection (3), provisions restricting gifts, leases and sales of the units and common interests; or

(e) a specification of the number, qualification, nomination, election, term of office, compensation and removal of members of the board, and the meetings, quorum, functions and officers of the board; or

(f) a specification of duties of the corporation consistent with its objects; or

(g) a specification of the majority required to make by-laws of the corporation; or

(h) provisions regulating the assessment and collection of contributions towards the common expenses; or

(i) provisions respecting the priority of a lien for unpaid assessment; or

(j) a specification of the majority required to make substantial changes in the common elements and the assets of the corporation; or

(k) a specification of any provision requiring the corporation to purchase the units and common interests of any owners who dissented after a substantial addition, alteration or improvement to, or renovation of, the common elements has been made or after the assets of the corporation have been substantially changed; or

(l) a specification of any allocation of the obligations to repair and to maintain the units and common elements; or

(m) a specification of the percentage of substantial damage to the buildings and a specification of the majority required to authorize repairs under section 19; or

(n) a specification of the majority required for a sale of the property or a part of the common elements; or

(o) a specification of the majority required for the termination of the government of the property under this Act; or

(p) any other matters concerning the property;

or any or all of such matters.

Am.

Limitation on certain provisions.

5(3) No provision contained in a declaration pursuant to clause (c) or (d) of subsection (2) shall discriminate because of the race, creed, colour, nationality, ancestry, or the place of origin of any person.

Am.
Amendment of declaration.

5(4) All matters contained in a declaration, except the address for service, may be amended only with the written consent of all owners, and all persons having registered encumbrances against the units and common interests.

Registration of amendment.

5(5) Where a declaration is amended, the corporation shall register a copy of the amendment either
(a) executed by all the owners and all persons having registered encumbrances against the units and common interests; or
(b) accompanied by a certificate under the seal of the corporation certifying that all the owners and all persons having registered encumbrances against the units and common interests had consented in writing to the amendment;
and until the copy is registered, the amendment is ineffective.
S.M., 1968, c. 10, s. 5; am.

Contents of plan.

6(1) A plan shall delineate the perimeter of the horizontal surface of the land, and the perimeter of the buildings in relation thereto, and shall contain
(a) structural plans of the buildings;
(b) a specification of the boundaries of each unit by reference to the buildings;
(c) diagrams showing the shape and dimensions of each unit and the approximate location of each unit in relation to the other units and the buildings;
(d) a certificate of a land surveyor certifying that he was present at and personally superintended the survey represented by the plan, and that the survey and plan are correct;
(e) a certificate of an architect certifying that the buildings have been constructed and that the diagrams of the units are substantially accurate, and substantially in accordance with the structural plans; and
(f) a description of any interest appurtenant to the land that is included in the property.

Approval of plan.

6(2) A plan and any amending plan shall not be registered unless it has been approved by the examiner of surveys.

Amendment of plan.

6(3) The plan may be amended only with the written consent of all owners and all persons having registered encumbrances against the units and common interests.

Registration of amendment.

6(4) Where a plan is amended, the corporation shall register a copy of the amended plan either
(a) executed by all the owners and all persons having registered encumbrances against the units and common interests; or
(b) accompanied by a certificate under the seal of the corporation certifying that all the owners and all persons having registered encumbrances against the units and common interests have consented in writing to the amendments;
and until the copy is registered, the amendment is ineffective.
S.M. 1968, c. 10, s. 6.
Nature of units and common interests.

7(1) Units and common interests are real property for all purposes; and the unit and common interest appurtenant thereto provided therein may devolve or be transferred, leased, mortgaged, or otherwise dealt with in the same manner and form as any land the title to which is registered under The Real Property Act.

Ownership of units.

7(2) Subject to this Act, the declaration and the by-laws, each owner is entitled to exclusive ownership and use of his unit.

Dangerous activities.

7(3) No condition shall be permitted to exist, and no activity shall be carried on, in any unit or the common elements that is likely to damage the property.

Am.

Right to enter.

7(4) The corporation, or any person authorized by the corporation, may enter any unit at any reasonable time to perform the objects and duties of the corporation.

S.M. 1968, c. 10, s. 7.

Ownership of common elements.

8(1) The owners are tenants in common of the common elements.

Common interest.

8(2) An undivided interest in the common elements is appurtenant to each unit.

Use of common elements.

8(3) Subject to this Act, the declaration and the by-laws, each owner may make reasonable use of the common elements.

Ownership not to be separated.

8(4) Except as provided by this Act, no share in the common elements shall be dealt with except with the unit of the owner; and any instrument dealing with a unit shall operate to deal with the share of the owner in the common elements without express reference thereto.

No partition.

8(5) Except as provided in this Act, the common elements shall not be partitioned or divided.

Encumbrances not enforceable.

8(6) No encumbrance is enforceable against the common elements after the declaration and plan are registered.
Saving.

8(7) Where, except for subsection (6), an encumbrance would be enforceable against the common elements, the encumbrance is enforceable against all the units and common interests.

Discharge.

8(8) Any unit and common interest may be discharged from an encumbrance by payments to the claimant of a portion of the sum claimed determined by the proportions specified in the declaration for sharing the common expenses.

Discharge on demand.

8(9) Upon payment of a portion of the encumbrance sufficient to discharge the encumbrance in so far as it affects a unit and common interest, and upon demand, the claimant shall give to the owner of that unit a discharge of the encumbrance in so far as it affects that unit and common interest.

Assessment for taxation.

8(10) For the purposes of municipal assessment and taxation, each unit and common interest constitute a parcel, and the common elements do not constitute a parcel.

Where corporation deemed to be occupier.

8(11) For the purpose of determining liability resulting from breach of the duties of an occupier of land, the corporation shall be deemed to be the occupier of the common elements and the owners shall be deemed not to be occupiers of the common elements.

S.M. 1968, c. 10, s. 8.

Easements appurtenant to units.

9(1) The following easements are created and are appurtenant to each unit:
   (a) Where a building or any part of a building
       (i) moves after registration of the declaration and plan; or
       (ii) after having been damaged and repaired, is not restored to the position occupied at the time of registration of the declaration and plan;
       an easement for exclusive use and occupation in accordance with this Act, the declaration and the by-laws, over the space of the other units and common elements that would be space included in the unit if the boundaries of the unit were determined by the position of the buildings from time to time after registration of the plan and not at the time of registration.
   (b) An easement for the provision of any service through any installation in the common elements or any other unit.
   (c) An easement for support and shelter by the common elements and any other unit capable of providing support or shelter.

Easements appurtenant to common elements.

9(2) The following easements are created and are appurtenant to the common elements:
   (a) An easement for the provision of any service through any installation in any unit.
   (b) An easement for support and shelter by any unit capable of providing support and shelter.
Ancillary rights.

9(3) All ancillary rights and obligations reasonably necessary to make easements effective apply in respect of easements implied or created by this Act.

Am. S.M. 1968, c. 10, s. 9; am.

Creation of corporation.

10(1) Upon registration of a declaration and plan, there is created a corporation without share capital having a name comprised of the following components:

(a) The district name of the land titles district.
(b) The words "condominium corporation".
(c) The abbreviation "No." together with a number which shall be the next available consecutive number in the Condominium Corporation's Index in that land titles district.

(Note: e.g. Winnipeg Condominium Corporation No. 3).

Members.

10(2) The members of the corporation are the owners from time to time; and they shall share the assets of the corporation in proportions as provided in the declaration.

Am.

Companies Act not to apply.

10(3) The Companies Act does not apply to a corporation.

Objects of corporation.

10(4) The objects of the corporation are to manage the property of the owners, and any assets of the corporation.

Responsibilities of corporation.

10(5) The corporation is responsible for the control, management and administration of the common elements.

Control of corporation.

10(6) The corporation shall be regulated in accordance with the declaration and the by-laws.

Records of corporation.

10(7) The corporation shall keep adequate records and any member of the corporation may inspect the records at any reasonable time on reasonable notice.

Change of address.

10(8) Upon there being a change of address for service from that set out in the declaration as required by subsection (1) of section 5, the corporation shall immediately register a notice of change of address for service, and the district registrar shall amend the declaration accordingly.
Real and personal property.

10(9) The corporation may own, acquire, encumber, and dispose of real and personal property for the use and enjoyment of the property.

Corporation may sue and be sued.

10(10) The corporation shall have a common seal and may sue and be sued; and in particular may bring an action with respect to the common elements and may be sued in respect of any matter connected with the property for which the owners are jointly liable.

Judgment against corporation.

10(11) A judgment for the payment of money against the corporation is also a judgment against each owner at the time the cause of action arose for a portion of the judgment determined by the proportions specified in the declaration for sharing the common expenses.

Effect of termination.

10(12) Where the owners and the property cease to be governed by this Act,
   (a) the assets of the corporation shall be used to pay any claims for the payment of money against the corporation; and
   (b) the remainder of the assets of the corporation shall be distributed among the members of the corporation in the same proportions as the proportions of their common interest.

S.M. 1968, c. 10, s. 10; am.

Board of directors.

11(1) The affairs of the corporation shall be managed by a board of directors whose number, qualification, nomination, election, term of office, compensation and removal from the board shall be as provided in the declaration or by-laws.

Duties of board.

11(2) The board of directors shall hold meetings, perform functions, elect officers, and carry out duties as provided in the declaration or by-laws.

Defects in election, etc.

11(3) The acts of a member of the board or an officer of the board done in good faith are valid notwithstanding any defect that may thereafter be discovered in his election or qualifications.

S.M. 1968, c. 10, s. 11.

By-laws.

12(1) The corporation, by a vote of members who own sixty-six and two-thirds percent, or such greater percentage as is specified in the declaration, of the common elements, may make or amend by-laws
   (a) governing the management of the property;
   (b) governing the use of units or any of them for the purpose of preventing unreasonable interference with the use and enjoyment of the common elements and other units;
   (c) governing the use of the common elements;
(d) regulating the maintenance of the units and common elements;
(e) governing the use and management of the assets of the corporation;
(f) respecting the board;
(g) specifying duties of the corporation consistent with its objects;
(h) regulating the assessment and collection of contributions towards the common expenses; and
(i) respecting the conduct generally of the affairs of the corporation.

By-laws consistent with Act.

12(2) The by-laws shall be reasonable and consistent with this Act and the declaration.

Registration.

12(3) When a by-law is made, amended, or repealed by the corporation, the corporation shall register a copy of the by-law, amendment, or repeal together with a certificate executed by the corporation certifying that the by-law, amendment, or repeal was made in accordance with this Act, the declaration and the by-laws; and until the copy and certificate are registered, the by-law is ineffective.

Prohibition.

12(4) No by-law or amendment or repeal thereof is capable of operating to prohibit or restrict the devolution of a unit, or any transfer, lease, mortgage or other dealing therewith, or to destroy or modify any easement implied or created under this Act.

Rules for common elements.

12(5) The by-laws may provide for the owners making reasonable rules consistent with this Act, the declaration and the by-laws respecting the use of the common elements for the purpose of preventing unreasonable interference with the use and enjoyment of the units and the common elements; and the rules shall be complied with and enforced in the same manner as the by-laws.

S.M. 1968, c. 10, s. 12; am.

Compliance by owners.

13(1) Each owner is bound by, shall comply with, and has a right to the compliance by the other owners with, this Act, the declaration and the by-laws; and the corporation has a duty to effect such compliance.

Compliance by others.

13(2) The corporation and each person having an encumbrance against a unit and common interest has a right to the compliance by the owners with this Act, the declaration and the by-laws.

Performance of duty of corporation.

13(3) Each member of the corporation and each person having an encumbrance against a unit and common interest has the right to the performance of any duty of the corporation specified by this Act, the declaration or the by-laws.

S.M. 1968, c. 10, s. 13.
Common expenses.

14(1) The corporation
   (a) shall establish a fund for the payment of the common expenses to which fund
       the owners shall contribute in proportions specified in the declaration;
   (b) shall assess and collect the owner's contributions towards the common expenses
       as regulated by the declaration and the by-laws;
   (c) shall pay the common expenses;
   (d) has the right to recover from any owner by an action for debt
       (i) the unpaid amount of any assessment;
       (ii) any sum of money expended by it for repairs to, or work done by it or
            at its direction in complying with any notice or order by a competent
            public or local authority in respect of that portion of the building
            comprising the unit of that owner; and
       (iii) any sum of money expended by it for repairs done by it under subsection
            (6) of section 18 for the owner;
   (e) has, subject to subsection (2), a right of lien for the unpaid amount of any
       assessment or account that the corporation has the right to recover from the
       owner under clause (d);
   (f) has the right to enforce the lien in the same manner as a mortgage is enforced
       under The Real Property Act; and
   (g) on the application of an owner or a purchaser of a unit and common interest,
       shall certify
       (i) the amount of any assessment and accounts owing by the owner to the
           corporation, and for which the corporation has a lien or right of lien
           against the unit and common interest of the owner;
       (ii) the manner in which the assessment and accounts are payable; and
       (iii) the extent to which the assessment and accounts have been paid by the
            owner;

   and in favour of any person dealing with that owner, the certificate is conclusive
   proof of the matters certified therein.

Registration of lien.

14(2) A right of lien to which reference is made in clause (e) of subsection (1) is,
      upon registration of a notice of lien, a lien against the unit and common interest
      of the defaulting owner, and has priority over all encumbrances unless otherwise provided
      in the declaration.

No avoidance of expenses.

14(3) The obligation of an owner to contribute towards the common expenses shall
      not be avoided by waiver of the right to use the common elements or by abandonment.

Discharge of lien.

14(4) Upon payment of the unpaid amount in respect of which a lien has been
      registered as provided in subsection (2), and upon demand, the corporation shall give
      a discharge of the lien.

Am. S.M., 1968, c. 10, s. 14; am.
Voting.

15(1) The owners have voting rights in the corporation in the proportions provided in the declaration.

Am.

Voting by mortgagee.

15(2) Where a registered mortgage of a unit and common interest contains a provision that authorizes the mortgagee to exercise the right of the owner to vote or to consent, the mortgagee may exercise the right, if he has given written notice of his mortgage to the corporation and the address for services of notices on him; and where two or more mortgages contain such a provision, the right to vote or consent is exercisable by the mortgagee who has priority.

Am.

Voting by minors, etc.

15(3) Any powers of voting conferred by this Act, the declaration, or the by-laws may be exercised, or any consent required to be given under this Act, the declaration or the by-laws may be given, or any document required to be executed under this Act, the declaration or the by-laws may be executed,

(a) in the case of an owner who is an infant, by the guardian of his estate or, if no guardian has been appointed, by the official guardian of the judicial district in which the property is situated; or

(b) in the case of an owner who is a mentally disordered person, by the committee of his estate or, if no committee has been appointed, by the Administrator of the Estates of Mentally Disordered Person; or

(c) in the case of an owner who is incapacitated for any other reason, by the person who, for the time being, is authorized by law to control his property.

Order of court.

15(4) Where the court, upon application of the corporation or of any owner, is satisfied that there is no person capable or willing or reasonably available to exercise the power of voting, giving consent, or executing a document, in respect of a unit, the court

(a) in cases where unanimous vote or unanimous consent is required by this Act, the declaration or the by-laws, shall; and

(b) in any other case, may in its discretion;

authorize the official administrator of the judicial district in which the property is situated, or some other fit and proper person, to exercise the power of voting, to give the consent, or to execute the document, in respect of the unit.

Order of authorization.

15(5) On giving authority under subsection (4), the court may make such order as it considers necessary or expedient to give effect to the authorization.

S.M., 1968, c. 10, s. 15.

Substantial alterations.

16(1) The corporation may, by a vote of members who own eighty per cent, or such greater percentage as is specified in the declaration, of the common elements make any substantial addition, alteration or improvement to or renovation of the common elements, or may make any substantial change in the assets of the corporation; and the corporation may, by a vote of a majority of the members, make any other addition, alteration or improvement to or renovation of the common elements, or make any other change in the assets of the corporation.
Costs.

16(2) The cost of any addition, alteration or improvement to or renovation of the common elements, and the cost of any substantial change in the assets of the corporation, are common expenses.

Dissenters.

16(3) The declaration may provide that, if any substantial addition, alteration or improvement to, or renovation of, the common elements is made, or if any substantial change in the assets of the corporation is made, the corporation shall, on demand of any owner who dissented, purchase his unit and common interest.

Arbitration.

16(4) Where the corporation and the owner who dissented do not agree as to the purchase price of the unit and common interest, the owner who dissented may elect to have the fair market value of his unit and common interest determined by arbitration by serving a notice to that effect on the corporation; and the purchase price of his unit and common interest is the fair market value determined by the arbitration; and the arbitration shall be a submission to two arbitrators and The Arbitration Act applies.

Am. S.M., 1968, c. 10, s. 16; am.

Duty to insure.

17(1) The corporation shall insure its liability to repair the units and common elements after damage resulting from fire, and such other risks as may be specified by the declaration or the by-laws, to the extent required by the declaration or the by-laws; and for that purpose the corporation has an insurable interest to the replacement value of the units and common elements.

Am.

Owner's right to insure.

17(2) Notwithstanding subsection (1), and The Insurance Act, or any other law relating to insurance, an owner may insure his unit in respect of any damage in a sum equal to the amount owing at the date of any loss referred to in the policy on a mortgage of his unit.

Payment to mortgagee.

17(3) Any payment by an insurer under a policy of insurance entered into under subsection (2) shall be made to the mortgagees if the mortgagees, or any of them, so require, in order of their priorities; and the insurer is then entitled to an assignment of the mortgage or a partial interest in the mortgage to secure the amount so paid.

Am.

Contribution.

17(4) A policy of insurance issued to a corporation under the authority of subsection (1) is not liable to be brought into contribution with any other policy of insurance except another policy issued on the same building under the authority of subsection (1).
Relation of owner's insurance.

17(5) A policy of insurance issued to an owner under the authority of subsection (2) is not liable to be brought into contribution with any other policy of insurance except another policy issued on the same unit under the authority of subsection (2).

Other insurance.

17(6) Subsections (1) and (2) do not restrict the capacity of any person to insure otherwise than as provided in those subsections.

S.M., 1968, c. 10, s. 17; am.

Obligations to repair and to maintain.

18(1) For the purposes of this Act, the obligation to repair after damage and the obligation to maintain are mutually exclusive; and the obligation to repair after damage does not include any obligation to repair improvements made to units after registration of the declaration and plan.

Duty to repair.

18(2) Subject to section 19, the corporation shall repair the units and common elements after damage.

Maintenance of common elements.

18(3) The corporation shall maintain the common elements.

Maintenance of units.

18(4) Each owner shall maintain his unit.

Declaration of obligations in declaration.

18(5) Notwithstanding subsections (2), (3) and (4), the declaration may provide that
(a) each owner shall, subject to section 19, repair his unit after damage; or
(b) the owners shall maintain the common elements or any part of the common elements; or
(c) the corporation shall maintain the units or any part of the units.

Am.

Permission to repair.

18(6) The corporation shall make any repairs that an owner is obligated to make and that he does not make, within a reasonable time.

Consent by owner.

18(7) An owner shall be deemed to have consented to have repairs done to his unit by the corporation under this section.

S.M., 1968, c. 10, s. 18; am.

Determination of damage.

19(1) Where damage to the units and common elements occurs, the board shall determine within thirty days of the occurrence whether there has been substantial damage to the extent that the cost of repair would be twenty-five per cent, or such greater percentage as is specified in the declaration, of the value of the units and common elements immediately prior to the occurrence.
Vote for repair.

19(2) Where there has been a determination that there has been substantial damage as provided in subsection (1), and the owners who own eighty per cent of the units and common elements, or such greater percentage as is specified in the declaration, vote for repairs within sixty days of the determination, the corporation shall repair.

S.M., 1968, c. 10, s. 19.

Termination by notice after substantial damage.

20(1) Where, on a vote, the owners do not vote for repair, the corporation shall, within ten days of the vote, register a notice of termination.

Termination where no vote taken.

20(2) Where there has been no vote within sixty days of the determination that there has been substantial damage under subsection (1) of section 19, the corporation shall, within ten days after the expiry of the sixty day period, register a notice of termination.

Effect of registration of notice.

20(3) Upon the registration of a notice of termination under subsection (1) or (2),
(a) the government of the property by this Act is terminated;
(b) the owners are tenants in common or lessees, as the case may be, of the land and interests appurtenant to the land described in the plan in the same proportions as their common interests;
(c) claims against the land and interests appurtenant to the land created before the registration of the declaration and plan are as effective as if the declaration and plan had not been registered;
(d) encumbrances against each unit and common interest created after the registration of the declaration and plan are claims against the interest of the owner in the land and interests appurtenant to the land described in the plan, and have the same priority they had before the registration of the notice of termination; and
(e) all claims against the property created after the registration of the declaration and plan, other than the encumbrances mentioned in clause (d), are extinguished.

S.M., 1968, c. 10, s. 20.

Termination by sale.

21(1) Sale of the property or any part of the common elements may be authorized
(a) by a vote of owners who own eighty per cent, or such greater percentage as is specified in the declaration, of the common elements; and
(b) by the consent of the persons having registered claims against the property or the parts of the common elements, as the case may be, created after the registration of the declaration and plan.

Execution of documents.

21(2) Where a sale of the property or any part of the common elements is authorized under subsection (1), the corporation shall
(a) register a notice of termination which shall describe the property or the part of the common elements being sold and shall affect only such property; and
(b) transfer the property or the part of the common elements being sold;
both of which shall either
(c) be executed by all the owners and all the persons having registered claims against the property or the part of the common elements being sold; or
(d) be executed by the corporation and be accompanied by a certificate under the
seal of the corporation certifying that the required percentage of owners as
stipulated in the Act or the declaration have voted in favour of the sale, and
that all persons having registered claims against the property or the part of
the common elements being sold have consented in writing to the sale.

Conclusiveness.

21(3) A certificate made under clause (d) of subsection (2) is conclusive proof of the
facts stated therein
(a) in favour of a purchaser of the parcel; and
(b) in favour of the district registrar.

Effect of registration.

21(4) Upon registration of the transfer, the district registrar shall
(a) endorse upon the certificate of title in the name of the corporation a memorial
that the property or a part of the common elements, as the case may be, is no
longer governed by this Act;
(b) in the case of a transfer of all of the property, cancel the certificates of title of
each unit, and where necessary, dispense with the production of the duplicate
certificate of title without complying with section 26 of The Real Property Act;
and
(c) in the case of a transfer of part of the common elements, cancel the certificate
of title for that part of the common elements being transferred.

Effect of registration on claims.

21(5) Upon the registration of the transfer
(a) registered claims against the land and interests appurtenant to the land created
before the registration of the declaration and plan are as effective in respect of
the property transferred as if the declaration and plan had not been registered;
and
(b) registered claims against the property or the part of the common elements
created after the registration of the declaration and plan are extinguished in
respect of the property transferred, and the district registrar shall issue the
certificates of title in respect of the property transferred clear of such registered
claims.

Proceeds.

21(6) Subject to subsection (7), the owners share the proceeds of the sale in the
same proportions as their common interest.

Rights of dissenters.

21(7) Where a sale is made under this section, any owner who dissented may elect
to have the fair market value of the property at the time of the sale determined by
arbitration by serving notice to that effect on the corporation within ten days after
the vote, and the arbitration shall be a submission to two arbitrators and The Arbitration
Act shall apply; and the owner who served the notice is entitled to receive from the
proceeds of the sale the amount he would have received if the sale price had been the
fair market value as determined by arbitration.
Where proceeds inadequate.

21(8) Where the proceeds of the sale are inadequate to pay the amount determined under subsection (7), each of the owners who voted for the sale is liable for a portion of the deficiency determined by the proportions of their common interests.

S.M., 1968, c. 10, s. 21; am.

Termination by notice without sale.

22(1) Termination of the government of the property under this Act may be authorized -
(a) by a vote of the owners who own eighty per cent, or such greater percentage as is specified in the declaration, of the common elements; and
(b) by the consent of the persons having registered claims against the property created after the registration of the declaration and plan.

Notice of termination.

22(2) Where termination of the government of the property under this Act is authorized under subsection (1), the corporation shall register a notice of termination which shall either -
(a) be executed by all the owners and all the persons having registered claims against the property created after the registration of the declaration and plan; or
(b) be executed by the corporation and accompanied by a certificate under the seal of the corporation certifying that the required percentage of owners as stipulated in the Act or the declaration and all the persons having registered claims against the property created after the registration of the declaration and plan had voted in favour of the termination of the government of the property.

Effect of registration.

22(3) Upon registration of a notice of termination under subsection (2),
(a) the government of the property under this Act is terminated;
(b) the owners are tenants in common, or lessees as the case may be, of the land and interests appurtenant to the land described in the plan in the same proportions as their common interests;
(c) claims against the land and the interests appurtenant to the land described in the plan created before the registration of the declaration and plan are as effective as if the declaration and plan had not been registered;
(d) encumbrances against each unit and common interest created after the registration of the declaration and plan are claims against the interest of the owner in the land and interests appurtenant to the land described in the plan, and have the same priority as they had before the registration of the notice of termination; and
(e) all other claims against the property created after the registration of the declaration and plan are extinguished.

Application to court.

23(1) Where
(a) damage to units and common elements occurs; or
(b) all or part of the property is expropriated; or
(c) the corporation or any owner, or any person having an encumbrance against a unit and common interest deems it advisable;
any interested party may apply to the court for an order terminating the government
of the property under this Act, or amending the declaration or the plan.

Considerations.

23(2) In determining whether to terminate the government of the property under this Act or to amend the declaration or the plan, the court shall consider

(a) the scheme and intent of this Act;
(b) the rights and interests of the owners individually and as a whole;
(c) what course of action would be most just and equitable; and
(d) the probability of confusion and uncertainty in the affairs of the corporation or the owners if the court does not make an order under subsection (1).

Order.

23(3) Where an order is made under subsection (1), the court may include in the order any provisions that the court considers appropriate in the circumstances including, without limiting the generality of the foregoing,

(a) directions for the payment of money by the corporation or by the owners or by some one or more of them; or
(b) directions to adjust the effect of the order as between the corporation and the owners and as amongst the owners themselves; or
(c) the application of insurance moneys or proceeds of the expropriation of common elements; or
(d) the transfer of the interests of owners of units which have been wholly or partially damaged or expropriated to the other owners.

Appearance by Insurer.

23(4) On any application to the court under this section, any insurer who has effected insurance on the units and the common elements under subsection (1) of section 17 may appear in person or by agent or counsel.

Variation.

23(5) The court may, from time to time, vary any order made by it under this section.

S.M., 1968, c. 10, s. 23.

Application to require performance of duties.

24(1) Where a duty imposed by this Act, the declaration or the by-laws is not performed, the corporation, any owner, or any person having an encumbrance against a unit and common interest may apply to the court for an order directing the performance of the duty.

Order.

24(2) The court may by order direct performance of the duty and may include in the order any provisions that the court considers appropriate in the circumstances including

(a) the appointment of an administrator for such time, and on such terms and conditions, as it deems necessary; and
(b) the payment of costs.
Administrator.

24(3) An administrator appointed under subsection (2)
(a) to the exclusion of the corporation, has such of the powers and duties of the corporation as the court shall order;
(b) has the right to delegate any of the powers so vested in him; and
(c) shall be paid for his services by the corporation, which payments are common expenses.

Am.

Saving clause.

24(4) Nothing in this section restricts the remedies otherwise available for failure to perform any duty imposed by this Act.

S.M., 1968, c. 10, s. 24; am.

Regulations.

25 For the purpose of carrying out the provisions of this Act according to their intent, the Registrar General, with the approval of the Lieutenant Governor in Council, may make such regulations as are ancillary thereto and are not inconsistent therewith; and every regulation made under, and in accordance with the authority granted by, this section has the force of law; and, without restricting the generality of the foregoing, the Registrar General, with the approval of the Lieutenant Governor in Council, may make such regulations not inconsistent with any other provision of this Act,

(a) prescribing forms for use under this Act;
(b) prescribing rules to cover cases for which no provision is made under this Act.

S.M., 1968, c. 10, s. 25; am.
AN ACT TO AMEND THE CONDOMINIUM ACT.

(Assented to June 3, 1976)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Subsec. 15 (3) am.
1 Subsection 15 (3) of The Condominium Act, being chapter C170 of the Revised Statutes, is amended
   (a) by striking out the words "official guardian of the judicial district in which the property is situated" in the 2nd and 3rd lines of clause (a) thereof and substituting therefor the words "Public Trustee in his capacity as official guardian"; and
   (b) by striking out the words "Administrator of the Estates of Mentally Disordered Persons" in the 2nd and 3rd lines of clause (b) thereof and substituting therefor the words "Public Trustee".

Subsec. 15 (4) am.
2 Subsection 15 (4) of the Act is amended by striking out the words "official administrator of the judicial district in which the property is situated under" in the 7th and 8th lines thereof and substituting therefor the words "Public Trustee".

Sec. 17 rep. and sub.
3 Section 17 of the Act is repealed and the following section is substituted therefor:

Corporation to insure against fire and other perils.
17 (1) The corporation shall obtain and maintain insurance on the units and the common elements to the replacement value thereof against fire, and against such other perils as may be specified by the declaration or by-laws, to the amount required by the declaration or by-laws; and for this purpose the corporation shall be deemed to have an insurable interest in the units and the common elements.
AN ACT TO AMEND THE CONDOMINIUM ACT (2).

(Assented to June 11, 1976)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Cl. 5 (1) (f.1) added.

1 Subsection 5 (1) of The Condominium Act, being chapter C170 of the Revised Statutes, is amended by adding thereto, immediately after clause (f) thereof, the following clause:

(f.1) it contains a statement indicating whether or not the property to which the declaration relates includes buildings that, on the date of registration, are leased to tenants under written leases.

Subsec. 5 (1.1) added.

2 Section 5 of the Act is further amended by adding thereto, immediately after subsection (1) thereof, the following subsection:

Special requirements for tenants.

5 (1.1) Where the property to which a declaration relates contains residential buildings that, on the date of registration, are leased to tenants who actually reside therein, the declaration shall not be registered unless

(a) it is accompanied by the written consents to the registration of the declaration of not less than 50% of the residential tenants who have written leases;
(b) it contains a statement that each residential tenant who on the date of the registration is in occupation has been given or will be given an option, exercisable at any time within 30 days after the date of receipt of the option, to purchase as a unit the premises that are the subject of the lease at a price not exceeding the price at which the unit will be offered to the public and on terms that are not less favourable;
(c) it contains a statement that the rights and duties of each tenant who, on the date of registration, is in occupation under a lease of any kind are continued in accordance with The Landlord and Tenant Act; and
(d) it contains a statement that the corporation is the assignee of the lessor in respect of all leases of any kind of the land that is the subject of the declaration or any portion thereof and in effect on the date of registration.
The Act is further amended by adding thereto, immediately after section 7 thereof, the following section:

Requirements of agreement to purchase.

7.1 No agreement to purchase a unit is enforceable against the purchaser unless the purchaser has had in his possession for at least 48 hours before he executed the agreement, and he has acknowledged receipt of,

(a) a statement indicating the amount of the share of the common expenses of the corporation that the vendor expects will be allocated to the unit during the period of 12 months after the date on which the purchase under the agreement is to take effect, and a statement showing the amount of the share of the common expenses that has been allocated to the unit during the period of 12 months before the date of the agreement, or, if the corporation has not been in actual operation for 12 months before that date, from the date that the common expenses were first allocated to any units;

(b) a statement specifying any parts of the common elements that the owner of the unit is not entitled to use;

(c) a statement indicating the amount that has been, or is expected by the vendor will be during the 12 months after the date of the agreement, allocated to the unit for repair and maintenance of the unit and common elements;

(d) a copy of, and a statement of any fees or expenses payable by the owner of the unit under, any contract in force on the date of the agreement under which a person agrees with the corporation to manage the common elements or the business and affairs of the corporation, or both, but not including a contract of employment of an individual by the corporation;

(e) a statement specifying any fee or expense in relation to the use and occupation of the unit that is not indicated under the statements required under clause (a), (b), (c) or (d) and that the vendor expects the owner of the unit to be called upon to pay during the period of 12 months after the date on which the purchase under the agreement is to take effect; and

(f) a copy of the declaration or the proposed declaration.

Commencement of Act.

4 This Act comes into force on September 1, 1976.
Bill 6

CHAPTER 13

AN ACT TO AMEND THE CONDOMINIUM ACT.

(Assented to June 15, 1979)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Cl. 1 (a.1) added.
1 Section 1 of The Condominium Act, being chapter C170 of the Revised Statutes, is amended by adding thereto, immediately after clause (a) thereof, the following clause:
   (a.1) "bare land unit" means a unit defined by delineation of its horizontal boundaries without reference to any buildings on a plan referred to in subsection 6 (5);

Cl. 1 (m) am.
1.1 Section 1 of the Act is further amended by adding thereto, immediately after the word "means" in the 1st line of clause (m) thereof, the words and figures "subject to subsection 8 (7.1),".

Cl. 1 (m.1) added.
2 Section 1 of the Act is further amended by adding thereto, immediately after clause (m) thereof, the following clause:
   (m.1) "improvement" includes any building or structure constructed on or added to a bare land unit after the registration of the declaration and plan;

Subsec. 2 (3) added.
3 Section 2 of the Act is amended by adding thereto, at the end thereof, the following subsection:

Boundaries of bare land units.
2 (3) Unless otherwise shown on a plan referred to in subsection 6 (5), the boundaries of a bare land unit shall be deemed to extend vertically upward and downward without limit.
Clause 5 (1) (f) am.

Clause 5 (1) (f) of the Act is amended by adding thereto, at the end thereof, the words “or interests or estates in the land in respect of which caveats, other than caveats claiming an interest or estate in the land by virtue of a residential tenancy, have been filed”.

Clause 5 (1) (j) added.

Subsection 5 (1) of the Act is further amended by striking out the word “and” in the 3rd line of clause (h) thereof, by adding thereto at the end of clause (i) thereof the word “and”, and by adding thereto, at the end thereof, the following clause:

(j) where the units are delineated on a plan referred to in subsection 6 (5), it contains a description of the manner of determining values in the event that the property ceases to be governed by this Act.

Clause 5 (1.1) (b) am.

Clause 5 (1.1) (b) of the Act is amended by adding thereto, immediately after the word “occupation” in the 2nd line thereof, the words “under a lease of any kind and who is still so in occupation on the date of the giving of the option,”.

Clause 5 (1.1) (d) rep.

Subsection 5 (1.1) of the Act is further amended by adding thereto, at the end of clause (b) thereof, the word “and”, by striking out the word “and” at the end of clause (c) thereof, and by striking out clause (d) thereof.

Subsec. 5 (6) added.

Section 5 of the Act is further amended by adding thereto, at the end thereof, the following subsection:

Dispensing with consent.

5 (6) Where, upon application, a judge of the court finds
(a) that a consent of any person required under clause 5 (1) (f) is unreasonably withheld; or
(b) that the encumbrance, interest or estate of any person whose consent is required under clause 5 (1) (f) would not be diminished or adversely affected by the registration of the declaration and plan;
he may dispense with the requirement of the consent of the person and thereupon the consent of that person is not required for the registration of the declaration and plan.

Clause 6 (1) (d) rep.

8.1 Clause 6 (1) (d) of the Act is repealed.

Subsec. 6 (2) rep. and sub.

8.2 Subsection 6 (2) of the Act is repealed and the following subsection is substituted therefor:
Approval of plan.
6 (2) A plan and any amending plan shall not be registered unless
(a) it contains the certificate of a land surveyor certifying that he was
present at and personally superintended the survey represented by
the plan or amending plan and that the survey and the plan or
amending plan are correct; and
(b) it has been approved by the examiner of surveys.

Subsecs. 6 (5), (6) and (7) added.
9 Section 6 of the Act is amended by adding thereto, at the end
thereof, the following subsections:

Approval for bare land units.
6 (5) A plan upon which one or more units are defined by delineation of
the horizontal boundaries of the unit without reference to any buildings shall
not be registered unless it is approved in accordance with section 112 of
The Real Property Act.

Approval for other plans.
6 (6) A plan upon which one or more of the horizontal boundaries at
ground level of one or more of the units is defined by a line in whole or in
part outside the limits at ground level of a building located upon the unit
shall not be registered unless it is approved in accordance with section 112
of The Real Property Act.

Application of subsec. (1) respecting bare land units.
6 (7) Subsection (1) does not apply to a plan upon which one or more units
are defined by delineation of horizontal boundaries thereof without reference
to any buildings but, if any building is shown on the plan, the Examiner of
Surveys may require compliance with any part of subsection (1) which he
deems necessary in respect of the building.

Subsec. 8 (7.1) added.
9.1 Section 8 of the Act is amended by adding thereto, immediately after
subsection (7) thereof, the following subsection:

“Encumbrance” in subsecs. (8) and (9).
8 (7.1) In subsections (8) and (9), “encumbrance” means an encumbrance
that is, or at one time was, enforceable against all the units and common
interests. but does not include a mortgage.

Subsec. 8 (8) rep. and sub.
9.2 Subsection 8 (8) of the Act is repealed and the following subsection
is substituted therefor:

Discharge.
8 (8) Any unit and common interest may be discharged from an encum-
brance by payment to the claimant of a portion of the sum claimed determined
by the proportion allocated to that unit in the declaration for contributions to
the common expenses.
Subsec. 9 (4) added.

Section 9 of the Act is amended by adding thereto, at the end thereof, the following subsection:

Application of subsecs. (1) and (2).

9 (4) Notwithstanding subsections (1) and (2)
(a) clause (1) (a) does not apply to a bare land unit;
(b) the easements for shelter provided in clauses (1) (c) and (2) (b) do not apply to a bare land unit; and
(c) clauses (1) (b) and (2) (a) do not apply to a bare land unit unless the installation was in existence at the time the owner of the bare land unit became the owner thereof.

Subsec. 17 (1) rep. and sub.

Subsection 17 (1) of the Act is repealed and the following subsection is substituted therefor:

Corporation to insure against fire and other perils.
17 (1) The corporation shall obtain and maintain insurance on the units and common elements excluding improvements and betterments made or acquired by the unit owner against fire, to the replacement value thereof, and against such other perils as may be specified by the declaration or by-laws to the amount required by the declaration or by-laws, and for this purpose the corporation shall be deemed to have an insurable interest in the units and the common elements.

Subsec. 17 (1.1) added.

Section 17 of the Act is further amended by adding thereto, immediately after subsection (1) thereof, the following subsection:

Where insurance not required.
17 (1.1) Notwithstanding subsection (1), except as may be required by a contrary provision contained in the declaration, the corporation is not obliged to obtain and maintain insurance on bare land units or on buildings or improvements placed on the bare land units.

Subsec. 17 (2) am.

Subsection 17 (2) of the Act is amended
(a) by adding thereto, immediately after the word “trustees” in the 3rd line thereof, the words “if any, or as may be otherwise”;
(b) by striking out the words “if any” in the 4th line thereof; and
(c) by striking out the word and figures “section 19” in the 5th line thereof and substituting therefor the words and figures “sections 19 and 20”.

Subsec. 17 (2.1) added.

Section 17 of the Act is further amended by adding thereto, immediately after subsection (2) thereof, the following subsection:
Insurance not to be considered as other insurance.

17 (2.1) Insurance obtained and maintained by a corporation under subsection (1) shall be deemed not to be other insurance for the purpose of any prohibition of or condition against other insurance in a policy of an owner insuring against loss of or damage to his unit or his interest in the common elements by fire or other peril and covering to the extent only that the insurance placed by the corporation is inapplicable, inadequate or ineffective.

Cl. 18 (5) (a) rep. and sub.

15 Clause 18 (5) (a) of the Act is repealed and the following clause is substituted therefor:

(a) each owner shall, subject to section 19, repair his unit after damage and each owner of a bare land unit shall repair his unit and improvements on the unit after damage unless a notice of termination is registered under section 20; or.

Subsec. 19 (1) am.

15.1 Subsection 19 (1) of the Act is amended

(a) by striking out the words “and common elements” in the 1st line thereof and substituting therefor the words “or the common elements or both; and

(b) by adding thereto, immediately after the word “units” in the 4th line thereof, the words “other than bare land units and improvements thereon”.

Cl. 20 (3) (b) am.

16 Clause 20 (3) (b) of the Act is amended by adding thereto, immediately after the letter “(b)” in the 1st line thereof, the words “except where the plan defines one or more bare land units”.

Cl. 20 (3) (b.1) added.

17 Subsection 20 (3) of the Act is further amended by adding thereto, immediately after clause (b) thereof, the following clause:

(b.1) where the plan defines one or more bare land units, the owners are tenants in common or lessees, as the case may be, of the land described in the plan and any interests appurtenant thereto in proportion to the value of each unit and the appurtenant common interest determined in accordance with the manner described in the declaration for determining value in the event that the property ceases to be governed by this Act.

Cl. 22 (3) (b) am.

18 Clause 22 (3) (b) of the Act is amended by adding thereto, immediately after the letter “(b)” in the 1st line thereof, the words “except where the plan defines one or more bare land units".
Cl. 22 (3) (b.1) added.

Subsection 22 (3) of the Act is further amended by adding thereto, immediately after clause (b) thereof, the following clause:

(b.1) where the plan defines one or more bare land units, the owners are tenants in common or lessees, as the case may be, of the land described in the plan and the interests appurtenant thereto in proportion to the value of each unit and the appurtenant common interest determined in accordance with the manner described in the declaration for determining values in the event that the property ceases to be governed by this Act;

Commencement of Act.

This Act comes into force on the day it receives the royal assent, but section 7 is retroactive and shall be deemed to have been in force on, from and after September 1, 1976.
CHAPTER 19
AN ACT TO AMEND THE CONDOMINIUM ACT
(Assented to June 30, 1982)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Cl. 5(1.1)(d) rep. and sub.
1 Clause 5(1.1)(d) of The Condominium Act, being chapter C170 of the Revised Statutes, is repealed and the following clause is substituted therefor:
   (d) it is accompanied by a statutory declaration that each tenant in occupancy on the date on which the declaration is registered has been offered an agreement which provides, in addition to the rights under clause (c)
   (i) that notwithstanding subsection 103(4) of The Landlord and Tenant Act, the tenant may continue in occupancy of the premises he occupies on the date of registration of the declaration for a period of at least 2 years after the date of registration of the declaration or at the option of the tenant, for a period equal to the number of full years the tenant has been in occupancy of any premises in the property as of the date of registration of the declaration,
   (ii) that where a landlord gives notice of an increase in rent to the tenant, the notice shall be given in accordance with, and the rent increase shall be subject to, the provisions of The Residential Rent Regulation Act,
   (iii) that the tenancy may not be terminated by the landlord except for cause provided in The Landlord and Tenant Act but the tenancy may be terminated at any time by the tenant on giving 3 months notice to the landlord or 1 month notice if the tenancy is terminated under subsection 103(13) of The Landlord and Tenant Act, and
   (iv) that the agreement is binding on the heirs, successors and assigns of the landlord, but is not assignable by the tenant.

Subsec. 5(1.2) rep.
2 Subsection 5(1.2) of the Act is repealed.

Commencement of Act.
3 This Act comes into force on a day fixed by proclamation.
APPENDIX D

NEW BRUNSWICK

CHAPTER C-16
Condominium Property Act

Chapter Outline
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buildings – bâtiment
by-law – règlement administratif
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common expenses – dépenses communes
common interest – quote-part
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owner – propriétaire
property – bien
registered – enregistré
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INTERPRETATION
1(1) In this Act
“board” means the board of directors of a corporation;
“buildings” means the buildings included in a property;
“by-law” means a by-law of a corporation;
“claim” includes a right, title, interest, encumbrance or demand of any kind affecting
land, but does not include the interest of an owner
in his unit and common interest;
“common elements” means all the property
except the units;
“common expenses” means the expenses of the
performance of the objects and duties of a
corporation and any expenses specified as common expenses in a declaration;
“common interest” means the interest in the
common elements appurtenant to a unit;
“corporation” means a corporation incorporated by this Act;
“declaration” means the declaration specified
in section 3, and includes any amendments;
“description” means the description specified
in section 4;
“encumbrance” means a claim that secures the
payment of money or the performance of any
other obligation, and includes a mortgage and a
lien;
“owner” means the owner or owners of the
freehold estate or estates in a unit and common
interest, but does not include a mortgagee unless
in possession;
“property” means the land and interests
appurtenant to the land described in the description,
and includes any land and interests appurtenan
to land that are added to the common elements;
"registered" means registered under the Registry Act;

"surveyor" means a land surveyor registered under The New Brunswick Land Surveyors Act, 1954;

"unit" means a part or parts of the land included in the description and designated as a unit by the description, and comprises the space enclosed by its boundaries and all the material parts of the land within this space at the time the declaration and description are registered.

1(2) For the purposes of this Act, the ownership of land includes the ownership of space. 1969, c.4, s.1.

DECLARATION AND DESCRIPTION

2(1) A property shall comprise only freehold land and interests, if any, appurtenant to that land.

2(2) A declaration and description shall be registered by or on behalf of the owner in fee simple of the land described in the description.

2(3) Where the land and the interests appurtenant to the land described in the description are within two or more counties the description shall be registered in the Registry Office of each county where the land is situated.

2(4) Upon registration of a declaration and description, the land and the interests appurtenant to the land described in the description are governed by this Act. 1969, c.4, s.2.

3(1) No declaration shall be registered unless it is executed by the owner or owners of the land and interests appurtenant to the land described in the description and unless it contains

(a) a statement of intention that the land and interests appurtenant to the land described in the description be governed by this Act,

(b) the consent of all persons having registered encumbrances against the land or interests appurtenant to the land described in the description,

(c) a statement, expressed in percentages, of the proportions of the common interests,

(d) a statement, expressed in percentages allocated to the units, of the proportions in which the owners are to contribute to the common expenses, and

(e) an address for service.

3(2) In addition to the matters mentioned in subsection (1), a declaration may contain

(a) a specification of common expenses,

(b) a specification of any parts of the common elements that are to be used by the owners of one or more designated units and not by all the owners,

(c) provisions respecting the occupation and use of the units and common elements,

(d) provisions restricting gifts, leases and sales of the units and common interests,

(e) a specification of the number, qualification, nomination, election, term of office, compensation and removal of members of the board, and the meetings, quorum, functions and officers of the board,

(f) a specification of duties of the corporation consistent with its objects,

(g) a specification of the majority required to make by-laws of the corporation,

(h) provisions regulating the assessment and collection of contributions toward the common expenses,

(i) a specification of the majority required to make substantial changes in the common elements and the assets of the corporation,

(j) a specification of any provision requiring the corporation to purchase the units and common interests of any dissenters after a substantial addition, alteration or im-
provement to or renovation of the common elements has been made or after the assets of the corporation have been substantially changed,

(k) a specification of any allocation of the obligations to repair and to maintain the units and common elements,

(l) a specification of the percentage of substantial damage to the buildings and a specification of the majority required to authorize repairs under section 17,

(m) a specification of the majority required for a sale of the property or of part of the common elements,

(n) a specification of the majority required for the termination of the government of the property by this Act, and

(o) any other matters concerning the property.

3(3) The declaration shall be amended only with the consent of all owners and all persons having registered encumbrances against the units and common interests.

3(4) When a declaration is amended, the corporation shall register a copy of the amendment executed by all the owners and all persons having registered encumbrances against the units and common interests, and until the copy is registered the amendment is ineffective. 1969, c.4.3.

4(1) A description shall contain

(a) a plan of survey showing the perimeter of the horizontal surface of the land and the perimeter of the buildings,

(b) structural plans of the buildings,

(c) a specification of the boundaries of each unit by reference to the buildings,

(d) diagrams showing the shape and dimensions of each unit and the approximate location of each unit in relation to the other units and the buildings,

(e) a certificate of a surveyor that the buildings have been constructed and the diagrams of the units are substantially accurate and substantially in accordance with the structural plans, and

(f) a description of any interests appurtenant to the land that are included in the property, prepared in accordance with the regulations.

4(2) No description shall be registered unless it has been approved in accordance with the regulations. 1969, c.4, s.3.

REGISTRATION

5(1) Every registrar of deeds in whose office a declaration and description are registered shall keep an index in the form prescribed by regulation to be known as the “Condominium Corporations Index”.

5(2) Every registrar of deeds in whose office a declaration and description are registered shall keep a register in the form prescribed by regulation to be known as the “Condominium Register”.

5(3) Declarations, descriptions, by-laws, notices of termination and other instruments respecting land governed by this Act shall be registered in the Condominium Register in accordance with this Act and the regulations, but, except as otherwise provided by this Act and the regulations, the Registry Act applies in respect of property governed by this Act. 1969, c.4, s.5.

UNITS AND COMMON ELEMENTS

6(1) Units and common interests are real property for all purposes.

6(2) Subject to this Act, the declaration and the by-laws, each owner is entitled to exclusive ownership and use of his unit.

6(3) No condition shall be permitted to exist and no activity shall be carried on in any unit or the common elements that are likely to damage the property.

6(4) The corporation or any person authorized by the corporation may enter any unit at any reasonable time to perform the objects and duties of the corporation. 1969, c.4, s.6.
7(1) The owners are tenants in common of the common elements.

7(2) An undivided interest in the common elements is appurtenant to each unit.

7(3) The proportions of the common interests are those expressed in the declaration.

7(4) Subject to this Act, the declaration and the by-laws, each owner may make reasonable use of the common elements.

7(5) The ownership of a unit shall not be separated from the ownership of the common interest, and any instrument that purports to separate the ownership of a unit from a common interest is void.

7(6) Except as provided by this Act, the common elements shall not be partitioned or divided.

7(7) No encumbrance is enforceable against the common elements after the declaration and description are registered.

7(8) Where but for subsection (7) an encumbrance would be enforceable against the common elements, the encumbrance is enforceable against all the units and common interests.

7(9) Any unit and common interest may be discharged from such an encumbrance by payments to the claimant of a portion of the sum claimed determined by the proportions specified in the declaration for sharing the common expenses.

7(10) Upon payment of a portion of the encumbrance sufficient to discharge a unit and common interest, and upon demand, the claimant shall give to the owner a discharge of that unit and common interest in accordance with the regulations.

7(11) For the purposes of assessment and taxation, each unit and common interest constitute a parcel, and the common elements do not constitute a parcel.

7(12) For the purpose of determining liability resulting from breach of the duties of an occupier of land, the corporation is the occupier of the common elements and the owners are not the occupiers of the common elements. 1969, c.4, s.7.

EASEMENTS

8(1) The following easements are appurtenant to each unit:

(a) where a building or any part of a building

(i) is moved after registration of the declaration and description, or

(ii) after having been damaged and repaired, is not restored to the position occupied at the time of registration of the declaration and description,

an easement for exclusive use and occupation in accordance with this Act, the declaration and the by-laws, over the space of the other units and common elements that would be space included in the unit if the boundaries of the unit were determined by the position of the buildings from time to time after registration of the description and not at the time of registration,

(b) an easement for the provision of any service through any installation in the common elements or any other unit, and

(c) an easement for support by the common elements and any other unit capable of providing support.

8(2) The following easements are appurtenant to the common elements:

(a) an easement for the provision of any service through any installation in any unit, and

(b) an easement for support by any unit capable of providing support. 1969, c.4, s.8.

CORPORATION

9(1) The registration of a declaration and description creates a corporation without share capital whose members are the owners from time to time.
9(2) When a declaration and description are registered, the registrar of deeds in whose office they are registered shall assign a name to the corporation in accordance with the regulations.

9(3) The Companies Act does not apply to the corporation.

9(4) The objects of the corporation are to manage the property and any assets of the corporation.

9(5) The affairs of the corporation shall be managed by a board of directors consisting of three persons or such greater number as the declaration or by-laws provides, elected by the members of the corporation.

9(6) The term of the members of the board shall be three years or such lesser period as the declaration or by-laws provides, but the members of the board may continue to act until their successors are elected, and are eligible for re-election.

9(7) If a vacancy in the membership of the Board occurs, a new member shall be elected by the members of the corporation.

9(8) A majority of the members of the Board or such greater number as the declaration or by-laws provides constitutes a quorum for the transaction of business.

9(9) The acts of a member or an officer of the Board are valid notwithstanding any defect that is afterwards discovered in his election or qualifications.

9(10) The declaration or the by-laws may specify and regulate the qualification, nomination, election, compensation and removal of members of the board, and the meetings, functions and officers of the board.

9(11) The corporation shall keep adequate records, and any member of the corporation may inspect the records on reasonable notice and at any reasonable time.

9(12) The corporation has a duty to effect compliance by the owners with this Act, the declaration and the by-laws.

9(13) The declaration or the by-laws shall specify the duties of the corporation consistent with its objects.

9(14) Each member of the corporation, and each person having an encumbrance against a unit and common interest, has the right to the performance of any duty of the corporation specified by this Act, the declaration and the by-laws.

9(15) The corporation may own, acquire, encumber and dispose of real and personal property for the use and enjoyment of the property.

9(16) The members of the corporation share the assets of the corporation in the same proportions as the proportions of their common interests in accordance with this Act, the declaration and the by-laws.

9(17) A judgment for the payment of money against the corporation is also a judgment against each owner at the time the cause of action arose for a portion of the judgment determined by the proportions specified in the declaration for sharing the common expenses.

9(18) Any action with respect to the common elements shall be brought by the corporation and a judgment for the payment of money in favour of the corporation in such an action is an asset of the corporation.

9(19) When the owners and the property cease to be governed by this Act,

(a) the assets of the corporation shall be used to pay any claims for the payment of money against the corporation, and

(b) the remainder of the assets of the corporation shall be distributed among the members of the corporation in the same proportions as the proportions of their common interests. 1969, c.4, s.9.
BY-LAWS

10(1) The corporation may, by a vote of members who own sixty-six and two-thirds percent, or such greater percentage as is specified in the declaration, of the common elements, make by-laws
(a) governing the management of the property;
(b) governing the use of units or any of them for the purpose of preventing unreasonable interference with the use and enjoyment of the common elements and other units;
(c) governing the use of the common elements;
(d) regulating the maintenance of the units and common elements;
(e) governing the use and management of the assets of the corporation;
(f) respecting the board;
(g) specifying duties of the corporation;
(h) regulating the assessment and collection of contributions towards the common expenses;
(i) respecting the conduct generally of the affairs of the corporation.

10(2) The by-laws shall be reasonable and consistent with this Act and the declaration.

10(3) When a by-law is made by the corporation, the corporation shall register a copy of the by-law together with a certificate executed by the corporation that the by-law was made in accordance with this Act, the declaration and the by-laws, and until the copy and certificate are registered the by-law is ineffective. 1969, c.4, s.10.

RULES GOVERNING USE OF COMMON ELEMENTS

11(1) The by-laws shall provide for the making of rules by the owners respecting the use of the common elements for the purpose of preventing unreasonable interference with the use and enjoyment of the units and common elements.

11(2) The rules shall be reasonable and consistent with this Act, the declaration and the by-laws.

11(3) The rules shall be complied with and enforced in the same manner as the by-laws. 1969, c.4, s.11.

OBLIGATIONS OF OWNERS

12(1) Each owner is bound by and shall comply with this Act, the declaration and the by-laws.

12(2) Each owner has a right to the compliance by the other owners with this Act, the declaration and the by-laws.

12(3) The corporation, and any person having an encumbrance against any unit and common interest, has a right to the compliance by the owners with this Act, the declaration and the by-laws. 1969, c.4, s.12.

13(1) The owners shall contribute towards the common expenses in the proportions specified in the declaration.

13(2) The assessment and collection of contributions towards the common expenses shall be regulated by the declaration or the by-laws.

13(3) The obligation of an owner to contribute towards the common expenses is not avoided by waiver of the right to use the common elements or by abandonment.

13(4) Where an owner defaults in his obligation to contribute to the corporation towards the common expenses, the corporation, upon registration of a notice of lien in the form prescribed by regulation, has a lien for the unpaid amount against the unit and common interest of that owner.

13(5) The lien may be enforced in the same manner as a mortgage.

13(6) Upon payment of the unpaid amount and upon demand, the corporation shall give the owner a discharge in the form prescribed by regulation. 1969, c.4, s.13.
MODIFICATIONS OF COMMON ELEMENTS AND ASSETS

14(1) The corporation may, by a vote of members who own
(a) eighty per cent, or such greater percentage as is specified in the declaration of the common elements
(i) make any substantial addition, alteration or improvement to or renovation of the common elements, and
(ii) make any substantial change in the assets of the corporation, and
(b) fifty-one per cent of the common elements
(i) make any other addition, alteration or improvement to or renovation of the common elements, or
(ii) make any other change in the assets of the corporation.

14(2) The cost of any addition, alteration or improvement to or renovation of the common elements and the cost of any substantial change in the assets of the corporation are common expenses.

14(3) The declaration may provide that if any substantial addition, alteration or improvement to or renovation of the common elements is made, or if any substantial change in the assets of the corporation is made, the corporation must, on demand of any owner who dissented, purchase his unit and common interest.

14(4) Where the corporation and the owner who dissented do not agree to the purchase price, the owner who dissented may elect to have the fair market value of his unit and common interest determined under the provisions of the Expropriation Act by serving a notice to that effect on the corporation. 1969, c.4, s.14; 1973, c.6, s.63.

REPAIRS AND MAINTENANCE

16(1) For the purposes of this Act, the obligation to repair after damage and to maintain are mutually exclusive, and the obligation to repair after damage does not include the repair of improvements made to units after registration of the declaration and description.

16(2) Subject to section 17, the corporation shall repair the units and common elements after damage.

16(3) The corporation shall maintain the common elements.

16(4) Each owner shall maintain his unit.

16(5) Notwithstanding subsections (2), (3) and (4), the declaration may provide that
(a) each owner shall, subject to section 17, repair his unit after damage,
(b) the owners shall maintain the common elements or any part of the common elements, or
(c) the corporation shall maintain the units.

16(6) The corporation shall make any repairs that an owner is obligated to make and that he does not make within a reasonable time.

16(7) Where the corporation has made repairs under subsection (6), an owner is deemed to have consented to such repairs done to his unit by the corporation under this section. 1969, c.4, s.16.

INSURANCE

15(1) A corporation shall insure its liability to repair the property after damage resulting from fire, tempest or other casualty to the extent required by the declaration or the by-laws.

WHERE DAMAGE OCCURS

17(1) Where damage to the buildings occurs, the board shall determine within thirty days of the occurrence whether there has been substan-
tial damage to at least twenty-five per cent, or such greater percentage as is specified in the declaration, of the buildings.

17(2) Where there has been a determination that there has been substantial damage to at least twenty-five per cent, or such greater percentage as is specified in the declaration, and owners who own eighty per cent of the common elements, or such greater percentage as is specified in the declaration, vote for repair within sixty days of the determination, the corporation shall repair. 1969, c.4, s.17.

TERMINATION

18(1) Where on a vote the owners do not vote for repair, the corporation shall, within ten days of the vote, register a notice of termination in the form prescribed by regulation.

18(2) Where there has been no vote within sixty days of the determination that there has been substantial damage under subsection 17(1), the corporation shall, within ten days after the expiry of the 60-day period, register a notice of termination in the form prescribed by regulation.

18(3) Upon the registration of a notice of termination under subsection (1) or (2),

(a) the government of the property by this Act is terminated,

(b) the owners are tenants in common of the land and interests appurtenant to the land described in the description in the same proportions as their common interests,

(c) claims against the land and interests appurtenant to the land created before the registration of the declaration and description are as effective as if the declaration and description had not been registered,

(d) encumbrances against each unit and common interest created after the registration of the declaration and description are claims against the interest of the owner in the land and interests appurtenant to the land described in the description, and have the same priority they had before the registration of the notice of termination, and

(e) all claims against the property created after the registration of the declaration and description, other than the encumbrances mentioned in paragraph (d), are extinguished. 1969, c.4, s.18.

19(1) Sale of the property or any part of the common elements shall be authorized

(a) by a vote of owners who own eighty per cent, or such greater percentage as is specified in the declaration, of the common elements, and

(b) by the consent of the persons having registered claims against the property or the part of the common elements, as the case may be, created after the registration of the declaration and description.

19(2) A deed shall be executed by all the owners and a release or discharge shall be given by all the persons having registered claims against the property or the part of the common elements, as the case may be, created after the registration of the declaration and description.

19(3) Upon the registration of the instruments mentioned in subsection (2),

(a) the government of the property or of the part of the common elements by this Act is terminated,

(b) claims against the land and interests appurtenant to the land created before the registration of the declaration and description are as effective as if the declaration and description had not been registered, and

(c) claims against the property or the part of the common elements created after the registration of the declaration and description are extinguished.

19(4) Subject to subsection (5), the owners share the proceeds of the sale in the same proportions as their common interests.

19(5) Where a sale is made under this section, any owner who dissented may elect to have the fair market value of the property at the time of the sale determined under the provisions of the
Expropriation Act by serving notice to that effect on the corporation within ten days after the vote, and the owner who served the notice is entitled to receive from the proceeds of the sale the amount he would have received if the sale price had been the fair market value as determined under that Act.

19(6) Where the proceeds of the sale are inadequate to pay the amount determined under subsection (5), each of the owners who voted for the sale is liable for a portion of the deficiency determined by the proportions of their common interests. 1969, c.4, s.19; 1973, c.6, s.63.

20(1) Termination of the government of the property by this Act may be authorized

(a) by a vote of owners who own eighty per cent, or such greater percentage as is specified in the declaration, of the common elements, and
(b) by the consent of the persons having registered claims against the property created after the registration of the declaration and description.

20(2) Where termination of the government of the property by this Act is authorized under subsection (1), the corporation shall register a notice of termination in the form prescribed by regulation, executed by all the owners and all the persons having registered claims against the property created after the registration of the declaration and description.

20(3) Upon registration of a notice of termination under subsection (2),

(a) the government of the property by this Act is terminated,
(b) the owners are tenants in common of the land and interests appurtenant to the land described in the description in the same proportions as their common interests.
(c) claims against the land and the interests appurtenant to the land described in the description created before the registration of the declaration and description are as effective as if the declaration and description had not been registered,

(d) encumbrances against each unit and common interest created after the registration of the declaration and description are claims against the interest of the owner in the land and interests appurtenant to the land described in the description and have the same priority as they had before the registration of the notice of termination, and
(e) all other claims against the property created after the registration of the declaration and description are extinguished. 1969, c.4, s.20.

21(1) The corporation, an owner, or a person having an encumbrance against a unit and common interest may apply to the Supreme Court for an order terminating the government of the property by this Act.

21(2) The Court may order that the government of the property by this Act be terminated if the Court is of the opinion that the termination would be just and equitable, and, in determining whether the termination would be just and equitable, the Court shall have regard to

(a) the scheme and intent of this Act,
(b) the probability of unfairness to one or more owners if termination is not ordered, and
(c) the probability of confusion and uncertainty in the affairs of the corporation or the owners if termination is not ordered.

21(3) Where an order of termination is made under subsection (2), the Court may include in the order any provisions that the Court considers appropriate in the circumstances. 1969, c.4, s.21.

VOTING BY MORTGAGEES

22 Where a mortgage or charge of a unit and common interest contains a provision that authorizes the mortgagee or chargee to exercise the right of the owner to vote or to consent, the mortgagee or chargee may exercise the right, and, where two or more such mortgages or charges contain such a provision, the right may be exercised by the mortgagee or chargee who has priority. 1969, c.4, s.22.
23(1) Where a duty imposed by this Act, the declaration or the by-laws is not performed, the corporation, an owner, or a person having an encumbrance against a unit and common interest may apply to the Supreme Court for an order directing the performance of the duty.

23(2) The Court may by order direct performance of the duty, and may include in the order any provisions that the Court considers appropriate in the circumstances.

23(3) Nothing in this section restricts the remedies otherwise available for failure to perform any duty imposed by this Act. 1969, c.4. s.23.

APPLICATION OF THE PLANNING ACT

24 Subsection 47(3) and paragraph 77(8)(c) of the Community Planning Act do not apply in respect of dealings with units and common interests. 1969, c.4, s.23; 1973, c.74, s.13.

REGULATIONS

25(1) The Lieutenant-Governor in Council may make regulations

(a) classifying properties for the purposes of the regulations;

(b) prescribing the duties of registrars appointed under the Registry Act for the purposes of this Act;

(c) governing the method of describing in instruments a property or any part of a property;

(d) governing surveys, structural plans, descriptions and diagrams, and prescribing procedures for their registration and amendment;

(e) requiring, in respect of any class of properties, in lieu of or in addition to the requirements of section 4, surveys of the properties showing the units and common elements;

(f) respecting the registration and recording of declarations, descriptions, by-laws, notices of termination and other instruments;

(g) respecting the names of corporations;

(h) respecting additions to the common elements;

(i) requiring the payment of fees to registrars appointed under the Registry Act, and prescribing the amounts thereof;

(j) prescribing forms and providing for their use;

(k) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

25(2) Any provision of any regulation may be made applicable to all properties or to any class of properties. 1969, c.4, s.25.
CHAPTER 21
An Act to Amend the Condominium Property Act

Assented to June 24, 1976

Her Majesty, by and with the advice and consent of the Legislative Assembly of New Brunswick, enacts as follows:

1 Subsection 4(2) of the Condominium Property Act, chapter C-16 of the Revised Statutes, 1973, is repealed and the following substituted therefor:

4(2) A description shall not be registered until it is approved in accordance with the regulations and subsection (3).

4(3) Where the land mentioned in a description is affected by a subdivision by-law or subdivision regulation under the Community Planning Act, the description shall not be approved unless such land is certified by a development officer appointed under the Community Planning Act as meeting the requirements of subsection 47(3) or paragraph 77(8)(c) of that Act.

2 Section 24 of the said Act is repealed and the following substituted therefor:

24 Except for a certification under subsection 4(3), and for the sale of part of the common elements under section 19, a subdivision by-law or subdivision regulation under the Community Planning Act does not apply to dealings under this Act.
CHAPTER 57

An Act to Provide for Ownership of Individual Units in Buildings.

1. This Act may be cited as The Condominium Act.

2. In this Act

(a) "buildings" means buildings and structures included in a property;
(b) "by-laws" means the by-laws made under Section 12;
(c) "common elements" means the whole property with the exception of the units;
(d) "corporation" means the corporation created upon the registration of a declaration;
(e) "declaration" means the declaration specified in Section 4, and where the context so admits includes any amendments to such declaration;
(f) "encumbrance" includes a mortgage or lien registered or capable of being registered in the Registry and a seizure or levy under attachment or execution of the property or a unit duly entered by the Sheriff in his office books, but does not include a lien conferred upon any authority or body under a statute of the province for rates, assessments or taxes of any description imposed on or in respect of any property;
(g) "Minister" means the Minister of Justice;
(h) "owner" means the owner of the freehold estate in the property or a unit, as the case may be, but does not include a mortgagee unless in possession;
(i) "plan" means the plan which is registered in the Registry at the time of presentation for registration of the declaration;

(ii) "property" means the land with the buildings described in the declaration, and includes all interests appurtenant to the land and buildings;

(k) "Registrar" means the Registrar of Deeds;

(l) "Registry" means the Registry of Deeds and other documents established under The Registration of Deeds Act;

(m) "regulations" means regulations made under this Act; and

(n) "unit" means a part or individual parts of the property designed and constructed for independent use or enjoyment of any kind and designated as a unit in the declaration.

Administration.

3. The Minister is charged with the administration of this Act.

Condominium.

4. The owner of any property may subdivide that property into units with common elements pertaining to each unit by registering or having registered on his behalf at the Registry a declaration and plan and by filing therewith a certificate, all prepared in accordance with this Act and the regulations, and upon the registration of such declaration and plan each unit together with the common elements specified in the declaration as pertaining to that unit shall be a chattel real and may be held, conveyed, sold, mortgaged, leased or otherwise disposed of in the same manner as any other chattel real but subject always to the provisions of this Act.

Declaration.

5.—(1) Every declaration shall be executed by the owner of the property and shall contain

(a) a full description of the property and buildings;

(b) a description of each unit, and a reference to the unit number on the plan;

(c) a description of or reference to each common element and the percentage which
(i) each common element is to relate to each unit,

(ii) all the common elements are, for the purposes of subsection (1) of Section 18, to relate to each unit, and

(iii) the owner of a unit is required to pay for the maintenance, repair and renewal of each common element;

(d) provisions relating to any limitations on use or special restrictions or obligations to be imposed on the owner of any unit or with respect to the unit or any common elements;

(e) a statement of intention that the property described under paragraph (a) of this subsection be governed by this Act; and

(f) such other matters or things as may be specified in the regulations.

(2) Every plan to be registered at the Registry with the declaration shall

(a) delineate the property and outline the buildings;

(b) show the location and the boundaries of each unit in the buildings, and specify a number by which each unit may be identified;

(c) show the location of each common element;

(d) contain a statement by

(i) a member of the Newfoundland Association of Architects,

(ii) a member of the Association of Professional Engineers of the Province of Newfoundland or a person licensed to practise under The Newfoundland Engineering Profession Act, or
(iii) a person entitled to practise as a land surveyor under The Land Surveyors Act,

that the contents of the plan are accurate; and

(e) contain such other matters or things as may be specified in the regulations.

(3) Every certificate to be filed in the Registry at the time of presentation for registration of the declaration and plan shall be the certificate of a barrister of the Supreme Court and shall contain statements

(a) that the person whose name appears in and executes the declaration as owner is the owner of the freehold estate in the property;

(b) that every person who holds an encumbrance over the property has received the notification with copy declaration and plan required by Section 6; and

(c) that all rates, real property taxes, assessments, charges and taxes of any description levied or imposed upon the owner and occupier of the property, or in respect of the property have been paid.

(4) Subject to any general or specific limitation provided in the regulations, nothing in this section shall prevent an owner from incorporating within the declaration any matter or thing, or showing upon the plan such information, respecting the property, the units or common elements or affecting the owners of the units, if such matter, thing or information is pertinent to the creation or proper use of the units or relates to the mutual interests in the common elements or use thereof and does not conflict with any of the provisions of this Act.

6.—(1) Not less than thirty days prior to the presentation for registration of the declaration and plan, the owner shall notify in writing or cause to be notified in writing the holder of any encumbrance over the property of his intention to present the declaration and plan for registration and to send to such holder at the time of notification a copy of the declaration and plan.
(2) If a holder of any encumbrance to whom notice is required to be given under subsection (1) objects to the registration of the declaration and plan by filing in the Registry a written notice of objection before registration is effected, the declaration and plan shall not be accepted for registration, and if accepted prior to the act of registration of the declaration and plan shall be returned forthwith to the owner or person who presented the declaration and plan for registration on his behalf.

(3) Upon presentation for registration of a declaration and plan, there shall be filed with the Registrar a certified copy of the notification required to be given under subsection (1).

(4) The Registrar shall not register a declaration and plan until the expiry of thirty days from the date of the notification required to be given under subsection (1) and in any event not after sixty days from such date.

7.—(1) Subject to subsection (3), a declaration may be amended by registering in the Registry an amending instrument, with or without the registration of an amended plan or new plan, duly executed by the owners of every unit in the property, and the amendment shall bear the signature, as consentor, of every holder of an encumbrance over any unit and common element affected by the amendment.

(2) Where the owners of units in a property are unable to agree to the terms or form of amendment to the declaration or plan, or any holder of an encumbrance over a unit or common element is unwilling to consent to the amendment, an application, in the form of an originating summons, may be made to a judge of the Supreme Court for an order to dispense with the execution of the amending instrument by all the owners of the units or all the holders of encumbrances, and if after making due enquiry the judge is satisfied

(a) that the amendment proposed is fair and reasonable, and is not prejudicial to the holder of any encumbrance who is unwilling to consent; and

(b) that not less than eighty per centum of the owners of the units concur with the proposed amendment,
he may make an order dispensing with the execution of the amending instrument by those owners of units or holders of such encumbrances who do not occur with or consent to its terms.

(3) An order made under subsection (2) shall specify the names of all persons who are required to execute the instrument and all persons whose signatures to the instrument are to be dispensed with.

(4) An instrument amending the declaration may be registered if it is executed by not less than eighty per centum of the owners of the units and does not bear the signature as consentor of every holder of an encumbrance over any unit and common element, if an order of a judge of the Supreme Court made under subsection (2) dispensing with the appropriate executions and signatures is registered in the Registry at the same time as application for registration of the amending instrument is made and upon registration of the amending instrument and the order of the judge, the amending instrument shall have full force and effect as if executed and consented to by all the persons required to execute or consent under subsection (1).

8.—(1) Subject to subsection (3) any property which has been divided into separate units with common elements under this Act may be unified and withdrawn from the provisions of this Act if

(a) there is registered in the Registry an instrument of withdrawal executed by all the owners of every unit and by the holder of every encumbrance over any unit and common element in the property; and

(b) there is filed with the instrument of withdrawal a certificate of a barrister of the Supreme Court that all rates, real property taxes, assessments, charges and taxes of any description levied or imposed upon the owner and occupier of every unit or in respect of every unit have been paid.

(2) Upon the registration of an instrument of withdrawal under subsection (1), this Act shall not apply to the property from the date of registration, and the property shall vest in the owners of
the units as tenants in common in the proportions set out in the instrument, and any encumbrances over any unit and the common elements shall attach to the property or any part thereof in the manner set out in the instrument.

(3) Subsections (2), (3) and (4) of Section 7 shall apply with the necessary modifications to an instrument of withdrawal under this section as they apply to an amending instrument under that section.

9.—(1) The Registrar shall keep in the Registry a book to be known as "the Condominiums Register" into which there shall be registered in the manner provided by this section all declarations, plans, amended plans, court orders, by-laws and other documents presented for registration and to be registered under this Act.

(2) The Condominiums Register shall contain the time when the instruments referred to in subsection (1) are presented for registration, the situation of the property, the number of units, the name of the corporation, a description of the character of every document, the date of the declaration, amendment to or withdrawal of the declaration, as the case may be, and such other matters or things as may be prescribed by the regulations.

(3) Upon the registration of every declaration and plan in the Condominiums Register, the Registrar of Deeds shall

(a) open a file which shall be identified by a cross-reference to the appropriate entry in the Condominiums Register and maintain in such file the declaration and plan and all other documents registered under this Act; and

(b) issue in the name of the corporation a certificate of registration under his hand showing the date of registration, the location of the property, the number of units, the folio number of the appropriate entry in the Condominiums Register and such other matters as may be prescribed in the regulations.

(4) Subject to this Act, The Registration of Deeds Act shall apply with the necessary modifications to the Condominiums

Register and to every instrument presented for registration under this Act, so however that

(a) Sections 11 to 19 of that Act (which relate to the proving of instruments) shall apply only to the declaration and to the instruments referred to in subsection (1) of Section 7 and paragraph (a) of subsection (1) of Section 8; and

(b) the obligations imposed by Sections 23 to 27 inclusive and Section 31 of that Act shall not apply insofar as they are at variance or are inconsistent with the provisions of this section.

(5) All instruments referred to in subsection (1) are deemed to be included among the deeds and other documents to which reference is made in subsection (1) of Section 6 of The Registration of Deeds Act, and may, notwithstanding any provision of that Act, be registered in the Condominiums Register in accordance with the provisions of this section and the regulations, and if so registered, nothing contained in Section 9 of that Act shall render them fraudulent or void for noncompliance with any of the provisions of that Act.

10.—(1) Ownership of a unit shall not pass to a person unless there is registered in the Registry the deed, conveyance, order or other instrument of conveyance or confirmation of title conveying or confirming the title of ownership to such person.

(2) When the deed, conveyance, order or other instrument referred to in subsection (1) is presented for registration in the Registry, it shall be accompanied by a copy executed or certified by the maker, and upon registration of the deed, conveyance, order or other instrument, the Registrar shall maintain the copy in the file opened pursuant to subsection (3) of Section 9.

11.—(1) The owner of a unit in a property shall hold each common element as a tenant in common with the owners of the other units in the property in the proportion which is specified in the declaration as the percentage which the common element is to relate to that unit.
(2) Subject to subsection (3), the ownership of a unit with its common elements are inseparable and any instrument or order purporting to separate or divide a unit from its common elements is void.

(3) Subject to any limitation or restriction contained in the declaration, a unit with its common elements may be divided into smaller units with corresponding subdivisions of the common elements pertaining to that unit by the registration of an instrument amending the declaration in the manner provided for and subject to the provisions specified in Section 7.

12. All rates, real property taxes, assessments, charges and taxes of any description, which may be levied or imposed by any body or authority under or by virtue of a statute of the province upon the owner or occupier of, or in respect of property which has been subdivided into separate units with common elements under this Act, shall from the date of registration of a declaration under this Act and during the time the property is subject to this Act be levied and imposed upon the owner or occupier of or in respect of every unit in the property and any assessment or levy which is based upon the value of real property shall be assessed and levied on the basis of the value of a unit together with the value of the percentage which the common elements relate to that unit.

13. — (1) The registration of a declaration and plan under this Act creates a corporation without share capital the members of which are the owners of the units and the object of which is to manage and maintain the property and the assets of the corporation.

(2) Every corporation shall have a name which

(a) is indicative of the location of the property;

(b) shall end with the words "condominium corporation";

and

(c) is approved by the Registrar.
(3) The assets of the corporation shall be the common elements and such sums of money and other things as may be held by the corporation from time to time with respect to the common elements, and the members of the corporation shall share in the assets and liabilities in the proportion which is specified in the declaration as the percentage which each common element relates to the unit owned by the member.

(4) It shall be the duty of the corporation to maintain, repair and if necessary renew the common elements and for these purposes it shall have power to

(a) effect compliance by the owner of every unit with the provisions of this Act, the regulations, the declaration and the by-laws; and

(b) make any repairs or do any matter or thing which the owner of any unit is obliged to do with respect to the common elements and to recover from such owner as a debt due by him all costs incurred by it in effecting the obligation of such owner.

(5) The corporation shall have power to do all matters or things necessary for or incidental to the achievement or carrying out of the objects and duties of the corporation, and, without prejudice to the generality of the foregoing, to enter into any unit or part thereof to inspect and to carry out such repairs or make such replacements to or within that unit as are in the opinion of the corporation necessary to keep the property or common elements in good state of repair, with power to recover from the owner of the unit as a debt due by him the cost of those replacements and repairs in respect of which the obligation to maintain falls upon such owner.

(6) Any action with respect to, arising from or relating to any common element shall be brought by or against the corporation in its own name, and any judgment against the corporation is also a judgment against the owner of a unit at the time when the action against the corporation was raised for a portion of the judgment debt corresponding to the proportion which is specified in the declaration as the percentage which that common element relates to the unit.
(7) Subject to the terms of the by-laws, the affairs of the corporation shall be administered and managed by its members, with power to appoint factors, agents, solicitors and other persons to assist it in the administration and management of the property and the assets.

(8) The Companies Act, paragraph (c) of Section 20 of The Interpretation Act and in so far as not inconsistent with the by-laws, paragraph (b) of the said Section 20 shall not apply to a corporation created under this Act.

(9) On the registration of an instrument of withdrawal under subsection (1) of Section 8 the corporation shall cease to exist, and

(a) any sums held by the corporation with respect to the common elements shall be used to pay any valid claims for the payment of money against the corporation; and

(b) the remaining assets of the corporation, other than the common elements, shall be distributed among its members in the same proportion as the assets of the corporation are held.

14.—(1) The corporation may, on a resolution of not less than two-thirds of its members or such other fraction as is specified in the declaration, make by-laws not inconsistent with or repugnant to this Act, the regulations or the declaration

(a) governing the use, maintenance, management and administration of the property and assets of the corporation;

(b) respecting the use of any of the units for the purposes of preventing unreasonable interference with the use and enjoyment of the common elements and other units;

(c) respecting the composition and appointment of a board of directors, fixing the terms of appointment and establishing rules of procedure, fixation of quorum and other matters deemed necessary for the proper functioning of such board;
(d) respecting the voting rights of the members of the corporation;

(e) specifying the functions and duties of the corporation and the board of directors;

(f) providing for the assessment, collection and disbursement of contributions from owners of the units relating to the common elements;

(g) respecting mutual insurance coverage on the property, units and common elements and the application of the proceeds of insurance; and

(h) covering any other matter respecting the conduct and affairs of the corporation.

(2) When the by-laws are made by the corporation, they shall be registered with the Registrar of Deeds together with a certificate signed by not less than two-thirds of the members of the corporation, or such other fraction as is specified in the declaration

(a) stating that the resolution referred to in subsection (1) has been made and that the persons subscribing the certificate concur with the by-laws as filed; and

(b) specifying every member of the corporation.

(3) By-laws made under this section may be amended or revoked by the corporation on a resolution of not less than two-thirds of its members or such other fraction as is specified in the declaration, and subsection (2) shall apply to the amendment or revocation of the by-laws as it applies to the by-laws.

15.—(1) Upon the registration of a declaration and plan there shall be implied by way of covenant in respect of each unit in favour of and against the owner of such unit as the case may be

(a) an easement of shelter and support by or of the common elements and by or of every unit capable of enjoying or providing shelter and support;
(b) an easement for the provision and passage of wires, cables, pipes or ducts relating to water, drainage, sewage, electricity, heating, lighting and other services including telephone, radio and television services; and

(c) a right in favour of the owner of the dominant tenement to enter and to permit any person acting for and on his behalf to enter upon the servient tenement for the purposes of repairing, replacing, renewing or restoring any part of the property or services affecting or interfering with the easements referred to in paragraphs (a) and (b).

(2) No easement or restrictive covenant in the declaration or by-laws shall defeat or be construed to defeat the covenants contained in subsection (1) or to affect the rights of any person or body entitled by any statute or law to enter the property or any unit thereof for the purpose of inspection, maintenance, repair or renewal of any part of the property or services affecting the property, the units or the common elements, and any provision in the declaration or by-laws which purports to provide otherwise shall be void.

16.—(1) The owner of every unit shall be bound by and shall comply with the terms, conditions, obligations and restrictions imposed on such owner by the declaration and by-laws.

(2) If the owner of any unit fails to pay the share imposed on him by the declaration in respect of the maintenance, repair and renewal of any common element or any sum which he is required to pay under the declaration or by-laws or is deemed by this Act as a debt due by him, the amount unpaid shall constitute a lien on the interest of such owner, and such lien may be registered by the corporation as an encumbrance over the unit of such owner by the registration in the Registry of an instrument in a form and in the manner prescribed by the regulations.

(3) On the registration of an encumbrance under subsection (2), it may be enforced by the corporation in the same manner as a mortgage.
17.—(1) Prior to the registration of a declaration and plan under this Act, the owner of the property and the holder of an encumbrance affecting the property may enter an agreement as to how the encumbrance is to be divided among the units and common elements or is otherwise to be dealt with, and following the registration of the declaration, the holder of the encumbrance may register the agreement.

(2) An agreement shall not be registered under subsection (1) unless it is presented for registration within thirty days after the registration of the declaration.

(3) Upon the registration of an agreement under subsection (1), the encumbrance against the property shall be released and the encumbrances created by the agreement over the individual units and common elements or otherwise shall take effect.

(4) An agreement registered under subsection (1) may provide that any encumbrance created by the agreement shall be deemed to have been registered at a time not earlier than the time when the encumbrance in respect of the property was registered, and notwithstanding anything in The Registration of Deeds Act, the encumbrances created by the agreement shall be deemed to have been registered at the time specified in the agreement.

18.—(1) In the absence of the registration of an agreement under Section 17, every encumbrance affecting the property prior to the registration of the declaration shall, without the necessity of registration of an instrument giving effect thereto, be deemed to attach proportionately to each unit and the common elements pertaining to each unit in the proportion which is specified in the declaration by virtue of the requirement of subparagraph (ii) of paragraph (c) of subsection (1) of Section 5 as being the percentage which all the common elements relate to the unit.

(2) The encumbrances deemed to attach proportionately to each unit under this section shall release the encumbrance existing over the property prior to the registration of the declaration and plan and notwithstanding anything in The Registration of Deeds Act, such encumbrances shall be deemed to have been registered at the time when the encumbrance over the property was registered.
19.—(1) Where a duty imposed by this Act, the regulations, the declaration or the by-laws is not performed, the corporation, any owner, or any person having an encumbrance against a unit and the common elements pertaining to that unit may apply to the Supreme Court for an order directing the performance of the duty.

(2) The Court may by order direct performance of the duty, and may include in the order any provisions that the Court considers appropriate in the circumstances.

(3) Nothing in this section restricts the remedies otherwise available for failure to perform any duty imposed by this Act.

20. Notwithstanding anything contained in this or any other Act, no future encumbrance shall be created or be effective against the property during the period that it remains subdivided into separate units with common elements under this Act.

21.—(1) The Lieutenant-Governor in Council may make regulations for the purpose of carrying the provisions of this Act into effect according to their true intent and for supplying any deficiency therein, and without limitation of the foregoing may make regulations

(a) classifying properties by size, number of units or use for the purposes of the regulations;

(b) respecting the declaration, its form, and for the purposes of paragraph (f) of subsection (1) of Section 5 specifying the contents of the declaration and matters or things to be included therein;

(c) prescribing requirements as to the quality, form, substance and layout of the plan, the number of plans to be filed and regulating the matters or things to be included therein;

(d) governing the Condominiums Register, the files to be opened by the Registrar and the duties of the Registrar and members of his staff;
(e) respecting the by-laws, their form and content or either form or content including the prescription of fees to be paid on the filing of by-laws;

(f) regulating the fees to be paid on registration of a declaration, instrument or other document presented and accepted for registration under this Act, which power shall include power to prescribe different fees for different documents and different fees for different classifications of property;

(g) for the purposes of Section 9, prescribing the matters or things to be included in the Condominiums Register and in the certificate of registration issued under that section;

(h) prescribing the size and form of all or any documents presented for registration and regulating the manner of registration; and

(i) covering any matter necessary or advisable to implement the intention and purpose of this Act.

Publication. Regulations made under this section shall be published in *The Newfoundland Gazette* and shall come into force on the date of publication or such later date as may be prescribed in the regulations and shall be laid before the Legislature within fifteen days after they are made if it is then in session, or if it is not then in session within fifteen days after the commencement of the next ensuing session.

Proclamation. This Act shall come into force on a date to be proclaimed by the Lieutenant-Governor in Council.
AN ACT TO AMEND THE CONDOMINIUM ACT.

(December 20, 1974)

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

1. This Act may be cited as The Condominium (Amendment) Act, 1974.

2. Paragraph (a) of subsection (1) of Section 21 of The Condominium Act, Chapter 57 of The Revised Statutes of Newfoundland, 1970, is repealed and the following is substituted therefor:

   "(a) classifying properties by size, number of units or use for the purposes of registration in the Condominiums Register and providing that properties so classified are the only properties to which the Act applies;".

3. Subsection (3) of Section 16 of the said Act is repealed and the following is substituted therefor:

   "(3) On the registration of an encumbrance under subsection (2), it may be enforced by the corporation in the same manner as a mortgage, but only if action to enforce the encumbrance is initiated by the corporation within thirty (30) days of the registration of the encumbrance, and a notice to that effect is filed with the Registrar within seven (7) days after the date of such initiation."
CHAPTER C-31
AN ACT TO REVISE
CHAPTER 4 OF THE ACTS OF 1968,
THE CONDOMINIUM PROPERTY ACT
CITED AS
S.N.S., 1970-71, CHAPTER 12

1 (1) In this Act,

(a) "accepted for registration" means accepted for registration by the Registrar in accordance with this Act and "submitted for registration" means submitted for registration to the Registrar in accordance with this Act;

(b) "board" means the board of directors of a corporation;

(c) "buildings" means the buildings, if any, included in a property;

(d) "by-law" means a by-law of a corporation;

(e) "claim" includes a right, title, interest, encumbrance or demand of any kind affecting land, but does not include the interest of an owner in his unit and common interest;

(f) "common elements" means all the property except the units;

(g) "common expenses" means the expenses of the performance of the objects and duties of a corporation and any expenses specified as common

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expenses in a declaration:

(h) "common interest" means the interest in the common elements appurtenant to a unit;

(i) "consolidated index" means the consolidated index maintained by a Registrar of Deeds pursuant to the Registry Act;

(j) "corporation" means a corporation incorporated by this Act;

(k) "Court" means the Trial Division of the Supreme Court of Nova Scotia;

(l) "declaration" means the declaration specified in Section 10 and includes any amendments;

(m) "description" means the description specified in Section 11;

(n) "encumbrance" means a claim that secures the payment of money or the performance of any other obligation, and includes a mortgage and a lien;

(o) "filed" means filed at the Office of the Registrar of Joint Stock Companies in accordance with this Act;

(p) "owner" means the owner or owners of the freehold estate or estates in a unit and common interest, but does not include a mortgagee unless in possession;

(q) "prescribed" means prescribed by the regulations;

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(r) "property" means the land and interests appurtenant to the land described in the description, and includes any land and interests appurtenant to land that are added to the common elements;

(s) "registered" means registered under the Registry Act;

(t) "Registrar" means the Registrar of Condominiums;

(u) "regulations" means the regulations made under this Act;

(v) "surveyor" means a person authorized to practise surveying or to make a survey in the Province;

(w) "unit" means a part or parts of the land included in the description and designated as a unit by the description, and comprises the space enclosed by its boundaries and all the material parts of the land within this space at the time the declaration and description are registered.

(2) For the purposes of this Act, the ownership of land includes the ownership of space. 1970-71, c. 12, s. 1; 1983, c. 50, s. 1.

2 The purpose of this Act is to facilitate the division of land into parts that are to be owned individually, and parts that are to be owned in common, and to provide for the use and management of such properties and to expedite dealings therewith; and this Act shall be construed in a manner to give the greatest effect to these objects. 1970-71, June 1, 1983
PART I - ADMINISTRATION

3 (1) The member of the Executive Council to whom the administration of this Act is assigned by the Governor in Council shall have the responsibility for the effective administration of this Act and shall be the Minister for the purposes of this Act.

(2) The Governor in Council may appoint a person to be Registrar of Condominiums to assist the Minister in the administration of this Act.

(3) The Minister may appoint a person to be Deputy Registrar of Condominiums who in the absence or incapacity of the Registrar or when the office of the Registrar is vacant shall perform the functions and may exercise all the powers of the Registrar.

(4) To assist the Registrar in performing his functions there shall be appointed in accordance with the Civil Service Act such inspectors, clerks and other persons as are necessary.

(5) With the approval of the Governor in Council the Registrar may engage solicitors, engineers, surveyors and other professionally or technically qualified persons.

4 It is the function of the Registrar and he has power to

(a) examine all documents, plans and other materials submitted to him in accordance with this Act or the regulations;

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(b) perform the duties and functions and exercise the powers imposed or conferred upon him by this Act or the regulations;

(c) perform such other functions as are prescribed by the Minister or by the Governor in Council. 1970-71, c. 12, s. 4.

PART II - REGISTRATION

5 (1) A property shall comprise only freehold land and interests, if any, appurtenant to that land.

(2) A declaration and description may be submitted for registration by or on behalf of the owner in fee simple of the land described in the description.

(3) A report on title prepared in accordance with the regulations showing the owner by whom the declaration and description are being submitted for registration as the owner in fee simple of the land shall be submitted to the Registrar before the declaration and description are accepted for registration.

(4) There shall also be submitted with the declaration and description an appointment in prescribed form giving the name and address of a recognized agent resident within the Province, service upon whom of any writ, summons, process, notice or other document shall be deemed to be sufficient service upon the corporation.

(5) Upon acceptance of a declaration and description for registration, the land and the interests appurtenant to the land described in the description are governed by this Act, and such acceptance shall be conclusive.

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evidence of compliance with all requirements of this Act in respect of acceptance for registration and of matters precedent and incidental thereto. 1970-71, c. 12, s. 5.

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PART III - DECLARATION AND DESCRIPTION

10 (1) A declaration shall not be registered unless it is executed by the owner or owners of the land and interests appurtenant to the land described in the description as shown in the report on title and unless it contains,

(a) a statement of intention that the land and interests appurtenant to the land described in the description be governed by this Act;

(b) the consent of all persons having registered encumbrances against the land or interests appurtenant to the land described in the description;

(c) a statement, expressed in percentages allocated to the units, of the proportions of the common interests;

(d) a statement, expressed in percentages allocated to the units, of the proportions in which the owners are to contribute to the common expenses; and

(e) a statement, expressed in percentages allocated to the units, of the proportions in which the owners are to have voting rights in the corporation.

(2) In addition to the matters mentioned in subsection (1), a declaration may contain,

(a) a specification of common expenses;

(b) a specification of any parts of the common elements that are to be used by the owners of one or more designated units and not by all the owners;

(c) provisions respecting the occupation and use of the units and common elements;

(d) provisions restricting gifts, leases and sales of the units and common interests;

(e) a specification of the number, qualification, nomination, election, term of office, compensation and
removal of members of the board, and the meetings, quorum, functions and officers of the board;

(f) a specification of duties of the corporation consistent with its objects;

(g) a specification of the duties of the corporation and the rights of the owners if all or part of the property is expropriated;

(h) a specification of the majority required to make by-laws of the corporation;

(i) provisions regulating the assessment and collection of contributions towards the common expenses;

(j) a specification of the majority required to make substantial changes in the common elements and the assets of the corporation;

(k) a specification of any provision requiring the corporation to purchase the units and common interests of any dissenters after substantial addition, alteration or improvement to or renovation of the common elements has been made or after the assets of the corporation have been substantially changed;

(l) a specification of any allocation of the obligations to repair and to maintain the units and common elements;

(m) a specification of the percentage of substantial damage to the buildings and a specification of the majority required to authorize repairs under Section 23;

(n) a specification of the majority required for a sale of the property or of part of the common elements;

(o) a specification of the majority required to permit the corporation to lease part of the common elements;

(p) a specification of the majority required for the
termination of the government of the property by this Act;

(q) any other matters concerning the property.

(3) The declaration may be amended only with the consent of all owners and all persons having registered encumbrances against the units and common interests.

(4) When a declaration is amended, the corporation shall submit for registration a copy of the amendment executed by all the owners and all persons having registered encumbrances against the units and common interests together with a supplementary report on title prepared in accordance with the regulations, and until the copy is accepted for registration, the amendment is ineffective.

(5) Upon submission and acceptance for registration, the Registrar shall deal with the amendment as provided in Section 7.

(6) No provision contained in a declaration pursuant to clause (c) or (d) of subsection (2) shall discriminate because of the race, religion, creed, colour, or ethnic or national origin of any person. 1970-71, c. 12, s. 10.

11 (1) A description shall contain the following prepared in accordance with the regulations:

(a) a plan or survey showing the perimeter of the horizontal surface of the land and the perimeter of the buildings, if any;

(b) structural plans of the buildings, if any;

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(c) a specification of the boundaries of each unit by reference to the buildings, or if there are no buildings, by reference to the appropriate co-ordinate monument;

(d) diagrams showing the shape and dimensions of each unit and the approximate location of each unit in relation to the other units and the buildings, if any;

(e) if buildings are included in a property, a certificate of a surveyor that the buildings have been constructed and that the diagrams of the units are substantially accurate and substantially in accordance with the structural plans;

(f) if no buildings are included in a property, a certificate of a surveyor that the horizontal boundaries of the units have been monumented on the ground in the prescribed manner and that the diagrams of the units are substantially accurate and substantially in accordance with the monuments so placed; and

(g) a description of any interests appurtenant to the land that are included in the property.

(2) A description shall not be accepted for registration unless it has been approved by the Registrar in accordance with the regulations. 1970-71, c. 12, s. 11; 1983, c. 50, s. 2.

PART IV - THE CORPORATION

12 (1) The acceptance for registra-

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tion of a declaration and description creates a corporation whose members are the owners from time to time.

(2) When a declaration and description are accepted for registration, the Registrar of Condominiums shall assign a name to the corporation comprised of the following components:

(a) the district name of the Registry district in which the property is located;

(b) the words "condominium corporation";

(c) the abbreviation "No." together with a number which shall be the next available consecutive number in the list of Condominium Corporations for that Registry district maintained by the Registrar in accordance with the regulations.

(3) The Acts named in the Schedule do not apply to the corporation.

(4) The objects of the corporation are to manage the property and any assets of the corporation.

(5) The corporation shall have all corporate powers and all corporate capacities necessary to enable it to do all such acts and things as are incidental or conducive to or consequential upon the attainment of its objects as set out in subsection (4) including, without limiting the generality of the powers and capacities of the
corporation, but subject to this Act, the declaration and the by-laws, the power to lease any part of the common elements.

(6) The affairs of the corporation shall be managed by a board of directors, consisting of three persons or such greater number as the declaration or by-laws may provide, elected by the members of the corporation.

(7) The term of the members of the board shall be three years or such lesser period as the declaration or by-laws may provide, but the members of the board may continue to act until their successors are elected, and members are eligible for re-election.

(8) If a vacancy in the membership of the board occurs, a new member shall be elected by the members of the corporation.

(9) A quorum for the transaction of business is a majority of the members of the board or such greater number as the declaration or by-laws may provide.

(10) The acts of a member of the board or an officer of the board are valid notwithstanding any defect that may afterwards be discovered in his election or qualifications.

(11) The declaration or the by-laws may specify and regulate the qualifications, nomination, election, compensation and removal of members of the board, and the meetings, functions and officers of the board.

(12) The board, whenever it deems advisable, may appoint a recognized agent in substitution of the agent previously appointed by submitting for registration a form of appointment in prescribed form under its corporate seal; the Registrar shall accept any such form of appointment for registration and shall file the same duly endorsed with the Registrar of Joint Stock Companies in accordance with the regulations.

(13) The corporation shall keep adequate records, and any member of the corporation may inspect the records on reasonable notice and at any reasonable time.

(14) The corporation has a duty to effect compliance by the owners with this Act, the declaration and the by-laws.
(15) The declaration or the by-laws may specify duties of the corporation consistent with its objects.

(16) Each member of the corporation, and each person having an encumbrance against a unit and common interest, has the right to the performance of any duty of the corporation specified by this Act, the declaration and the by-laws.

(17) The corporation may own, acquire, encumber and dispose of real and personal property for the use and enjoyment of the property.

(18) The members of the corporation share the assets of the corporation in the same proportions as the proportions of their common interests in accordance with this Act, the declaration and the by-laws.

(19) A judgment for the payment of money against the corporation is also a judgment against each owner at the time the cause of action arose for a portion of the judgment determined by the proportions specified in the declaration for sharing the common expenses.

(20) Any such owner may be discharged from such a judgment by payment to the claimant of a portion of the judgment debt and costs determined by the proportions specified in the declaration for sharing the common expenses; and upon such payment being made, the holder of the judgment shall give to the owner a discharge in accordance with the regulations.

(21) Any action with respect to the common elements may be brought by the corporation and a judgment for the payment of money in favour of the corporation in such an action is an asset of the corporation.

(22) When the owners and the property cease to be governed by this Act, an order for winding up shall be deemed to have been made and registered under the Companies Winding Up Act and, subject to the provisions of subsection (23), that Act shall apply mutatis mutandis, to the winding up of the corporation.

(23) The following provisions apply to the winding up of a condominium corporation:
(a) the liquidator or liquidators or some of them may be appointed from the members of the board;

(b) the Court may make any order which it deems just and equitable concerning the management of the property before sale, including any order relating to the payment by the owners of municipal taxes and of expenses which would have been common expenses had the property not ceased to be governed by this Act;

(c) the assets of the corporation shall be used to pay any claims for the payment of money against the corporation;

(d) the remainder of the assets of the corporation shall be distributed among the members of the corporation in the same proportions as the proportions of their common interests. 1970-71, c. 12, s. 12.

13 (1) The corporation, by a vote of members who own sixty-six and two-thirds per cent, or such greater percentage as is specified in the declaration, of the common elements, may make by-laws,

(a) governing the management of the property;

(b) governing the use of units or any of them for the purpose of preventing unreasonable interference with the use and enjoyment of the common elements and other units;

(c) governing the use of the common elements;

(d) regulating the maintenance of the units and common elements;

(e) governing the use and management of the assets of the corporation;

(f) respecting the board;

(g) specifying duties of the corporation;
(h) regulating the assessment and collection of contributions towards the common expenses;

(i) respecting the conduct generally of the affairs of the corporation.

(2) The by-laws shall be reasonable and consistent with this Act and the declaration.

(3) When a by-law is made by the corporation, the corporation shall submit for registration a copy of the by-law together with a certificate in prescribed form executed by the corporation that the by-law was made in accordance with this Act, the declaration and the by-laws, and the Registrar shall accept such by-law and certificate for registration.

(4) Upon acceptance for registration, the Registrar shall deal with the by-law as provided in Section 7 but, until the copy and certificate are accepted for registration, the by-law is ineffective.

(5) No by-law or amendment or repeal thereof is capable of operating to prohibit or restrict the devolution of a unit, or any transfer, lease, mortgage or other dealing therewith, or to destroy or modify any easement implied or created under this Act. 1970-71, c. 12, s. 13.

14 (1) The by-laws may provide for the making of rules by the owners respecting the use of the common elements for the purpose of preventing unreasonable interference with the use and enjoyment of the units and common elements.

(2) The rules shall be reasonable and consistent with this Act, the declaration and the by-laws.

(3) The rules shall be complied with and enforced in the same manner as the by-laws. 1970-71, c. 12, s. 14.

PART V - CONDOMINIUMS

15 (1) Units and common interests are real property for all purposes.
(2) Subject to this Act, the declaration and the by-laws, each owner is entitled to exclusive ownership and use of his unit.

(3) No condition shall be permitted to exist and no activity shall be carried on in any unit or the common elements that are likely to damage the property.

(4) The corporation or any person authorized by the corporation may enter any unit at any reasonable time to perform the objects and duties of the corporation. 1970-71, c. 12, s. 15.

16 (1) The owners are tenants in common of the common elements.

(2) An undivided interest in the common elements is appurtenant to each unit.

(3) The proportions of the common interests are those expressed in the declaration.

(4) Subject to this Act, the declaration and the by-laws, each owner may make reasonable use of the common elements.

(5) The ownership of a unit shall not be separated from the ownership of the common interest, and any instrument dealing with a unit shall operate to deal with the common interest appurtenant thereto without express reference thereto.

(6) Except as provided by this Act, the common elements shall not be partitioned or divided.

(7) No encumbrance is enforceable against the common elements after the declaration and description are accepted for registration.

(8) Where but for subsection (7) an encumbrance would be enforceable against the common elements, the encumbrance is enforceable against all the units and common interests.

(9) Any unit and common interest may be discharged from such an encumbrance by payment to the claimant of a portion of the sum claimed determined by the proportions specified in the declaration for sharing the common expenses.
(10) Upon payment of a portion of the encumbrance sufficient to discharge a unit and common interest, the claimant shall give to the owner a discharge of that unit and common interest in accordance with the regulations.

(11) For the purpose of municipal assessment and taxation, each unit and common interest constitute a parcel, and the common elements do not constitute a parcel.

(12) For the purpose of determining liability resulting from breach of the duties of an occupier of land, the corporation is the occupier of the common elements and the owners are not occupiers of the common elements. 1970-71, c. 12, s. 16.

17 (1) The following easements are appurtenant to each unit:

First: Where a building or any part of a building,

(a) moves after acceptance of the declaration and description for registration; or

(b) after having been damaged and repaired, is not restored to the position occupied at the time of acceptance of the declaration and description for registration,

an easement for exclusive use and occupation in accordance with this Act, the declaration and the bylaws, over the space of the other units and common elements that would be space included in the unit if the boundaries of the unit were determined by the position of the buildings from time to time after acceptance of the description for registration and not at the time of acceptance for registration.

Second: An easement for the provision of any service through any installation in the common elements or any other unit.

Third: An easement for support and shelter by the common elements and any other unit capable of providing support and shelter.
(2) The following easements are appurtenant to the common elements:

First: An easement for the provision of any service through any installation in any unit.

Second: An easement for support and shelter by any unit capable of providing support and shelter.

(3) All ancillary rights and obligations reasonably necessary to make easements effective apply in respect of easements implied or created by this Act. 1970-71, c. 12, s. 17.

18 (1) Each owner is bound by and shall comply with this Act, the declaration and the by-laws.

(2) Each owner has a right to the compliance by the other owners with this Act, the declaration and the by-laws.

(3) The corporation, and any person having an encumbrance against any unit and common interest, has a right to the compliance by the owners with this Act, the declaration and the by-laws. 1970-71, c. 12, s. 18.

19 (1) The corporation

(a) shall establish a fund for the payment of the common expenses to which fund the owners shall contribute in proportions specified in the declaration;

(b) shall assess and collect the owner’s contributions towards the common expenses as regulated by the declaration and the by-laws;

(c) shall pay the common expenses;

(d) has the right to recover from any owner by an action for debt

(i) the unpaid amount of any assessment;

(ii) any sum of money expended by it for repairs
to, or work done by it or at its direction in complying with any notice or order by a competent public or local authority in respect of that portion of the building comprising the unit of that owner; and

(iii) any sum of money expended by it for repairs done by it under subsection (6) of Section 22 for the owner;

(e) on the application of an owner or a purchaser of a unit and common interest, shall certify

(i) the amount of any assessment and accounts owing by the owner to the corporation, and for which the corporation has a lien or right of lien against the unit and common interest of the owner;

(ii) the manner in which the assessment and accounts are payable; and

(iii) the extent to which the assessment and accounts have been paid by the owner;

and in favour of any person dealing with that owner, the certificate is conclusive proof of the matters certified therein.

(2) The obligation of an owner to contribute towards the common expenses shall not be avoided by waiver of the right to use the common elements or by abandonment.

(3) Where an owner defaults in his obligation to pay to the corporation any amount the corporation has the right to recover under clause (d) of subsection (1), the corporation has a lien for the unpaid amount against the unit and common interest of that owner.

(3A) The lien referred to in subsection (3) shall be payable in priority to all other liens, charges or mortgages in respect of the unit and the common interest, other than a lien for taxes or a lien for money due to the Nova Scotia Power Corporation for the supply of electric power and energy.

(3B) Every mortgagee, judgment creditor or other person having any lien, charge or encumbrance upon or against a...
unit and the common interest subject to the lien mentioned in subsection (3) may, at any time after the lien arises, pay to the corporation the amount of the lien, together with all interest and expenses and add the amount so paid to his mortgage, judgment or other security, and shall have in respect thereto the same rights, remedies and privileges against the unit and the common interest as he has by virtue of or under the security held by him and he may also sue for and recover in an action for debt the amount so paid, together with interest thereon, against the person primarily liable to pay such amount.

(4) The lien may be enforced in the same manner as a mortgage and the Rules of the Supreme Court respecting foreclosure shall apply mutatis mutandis.

(5) Upon payment of the unpaid amount, the corporation shall give the owner a discharge in the prescribed form. 1970-71, c. 12, s. 19; 1982, c. 55, s. 1.

20 (1) The corporation, by a vote of members who own eighty per cent, or such greater percentage as is specified in the declaration, of the common elements, may make any substantial addition, alteration or improvement to or renovation of the common elements or may make any substantial change in the assets of the corporation, and the corporation, by a vote of a majority of the members, may make any other addition, alteration or improvement to or renovation of the common elements or may make any other change in the assets of the corporation.

(2) The cost of any addition, alteration or improvement to or renovation of the common elements and the cost of any substantial change in the assets of the corporation are common expenses.

(3) The declaration may provide that if any substantial addition, alteration or improvement to or renovation of the common elements is made, or if any substantial change in the assets of the corporation is made, the corporation must, on demand of any owner who dissented, purchase his unit and common interest.

(4) Where the corporation and the owner who dissented do not agree as to the purchase price, the owner who dissented may elect to have the fair market value of his unit and common interest
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determined by arbitration under the Arbitration Act by serving a notice to that effect on the corporation, and the purchase price of his unit and common interest is the fair market value determined by the arbitration. 1970-71, c. 12, s. 20.

21  (1) The corporation shall insure its liability to repair the units and common elements after damage resulting from fire, and such other risks as may be specified by the declaration or the by-laws, to the extent required by the declaration or the by-laws; and for that purpose the corporation has an insurable interest to the replacement value of the units and common elements.

(2) Notwithstanding subsection (1), and the Insurance Act, or any other law relating to insurance, an owner may insure his unit in respect of any damage in a sum equal to the amount owing at the date of any loss referred to in the policy on a mortgage of his unit.

(3) Any payment by an insurer under a policy of insurance entered into under subsection (2), shall be made to the mortgagees if the mortgagees, or any of them, so require, in order of their priorities; and the insurer is then entitled to an assignment of the mortgage or a partial interest in the mortgage to secure the amount so paid.

(4) A policy of insurance issued to a corporation under the authority of subsection (1) is not liable to be brought into contribution with any other policy of insurance except another policy issued on the same building under the authority of subsection (1).

(5) A policy of insurance issued to an owner under the authority of subsection (2) is not liable to be brought into contribution with any other policy of insurance except another policy issued on the same unit under the authority of subsection (2).

(6) Subsections (1) and (2) do not restrict the capacity of any person to insure otherwise than as provided in those subsections. 1970-71, c. 12, s. 21.

22  (1) For the purposes of this Act, the obligation to repair after damage and to maintain are mutually exclusive, and the
obligation to repair after damage does not include the repair of improvements made to units after acceptance for registration of the declaration and description.

(2) Subject to Section 23, the corporation shall repair the units and common elements after damage.

(3) The corporation shall maintain the common elements.

(4) Each owner shall maintain his unit.

(5) Notwithstanding subsections (2), (3) and (4), the declaration may provide that,
(a) subject to Section 23, each owner shall repair his unit after damage;

(b) the owners shall maintain the common elements or any part of the common elements; or

(c) the corporation shall maintain the units or any part of the units.

(6) The corporation shall make any repairs that an owner is obligated to make and that he does not make within a reasonable time.

(7) An owner shall be deemed to have consented to have repairs done to his unit by the corporation under this Section. 1970-71, c. 12, s. 22.

23 (1) Where damage to the buildings occurs, the board shall determine within thirty days of the occurrence whether there has been substantial damage to the extent that the cost of repair would be twenty-five per cent, or such greater percentage as is specified in the declaration, of the value of the buildings immediately prior to the occurrence.

(2) Where there has been a determination that there has been substantial damage as provided in subsection (1) and owners who own eighty per cent of the common elements, or such greater percentages as is specified in the declaration, vote for repair within sixty days of the determination, the corporation shall repair.

(3) Where on a vote the owners do not vote for repair, the corporation shall, within ten days of the vote, submit for registration a notice of termination in the prescribed form and the Registrar shall accept the notice for registration.

(4) Where there has been no vote within sixty days of the determination that there has been substantial damage under subsection (1), the corporation shall, within ten days after the expiry of the sixty day [sixty-day] period, submit for registration a notice of termination in the prescribed form and the Registrar shall accept the notice for registration.

(5) Upon the acceptance for registration of a notice of
termination under subsection (3) or (4), the provisions of Section 29 apply. 1970-71, c. 12, s. 23.

24 (1) The owners have voting rights in the corporation in the proportions specified in the declaration.

(2) Where a mortgage or charge of a unit and common interest contains a provision that authorizes the mortgagee or chargee to exercise the right of the owner to vote or to consent, the mortgagee or chargee may exercise the right, and, where two or more such mortgages or charges contain such a provision, the right may be exercised by the mortgagee or chargee who has priority.

(3) Any powers of voting conferred by, or any consent required to be given or document required to be executed under this Act, the declaration or the by-laws by an owner may be exercised, given or executed

(a) in the case of an owner who is an infant or incompetent person, by his guardian, or

(b) in any other case by the person who for the time being is authorized by law to control the owner's property.

(4) Where the Court upon application of the corporation or of any owner, is satisfied that there is no person capable or willing or reasonably available to exercise the power of voting, giving consent, or executing a document, in respect of a unit, the Court

(a) in cases where unanimous vote or unanimous consent is required by this Act, the declaration or the by-laws, shall; and

(b) in any other case, may in its discretion;

authorize some other fit and proper person to exercise the power of voting, to give the consent, or to execute the document, in respect of the unit. 1970-71, c. 12, s. 24.

25 (1) Where a duty imposed by this Act, the declaration
or the by-laws is not performed, the corporation, any owner, or any person having an encumbrance against a unit and common interest may apply to the Court for an order directing the performance of the duty.

(2) The Court may by order direct performance of the duty, and may include in the order any provisions that the Court considers appropriate in the circumstances including

(a) the appointment of an administrator for such time, and on such terms and conditions, as it deems necessary; and

(b) the payment of costs.

(3) An administrator appointed under subsection (2)

(a) to the exclusion of the corporation, has such powers and duties of the corporation as the court [Court] shall order;

(b) has the right to delegate any of the powers so vested in him; and

(c) shall be paid for his services by the corporation, which payments are common expenses.

(4) Nothing in this Section restricts the remedies otherwise available for failure to perform any duty imposed by this Act. 1970-71, c. 12, s. 25.

26 (1) The expropriation of all or part of the property shall not terminate the government of the property by this Act.

(2) The expropriation of all of the property shall not make the expropriating authority a member of the corporation. 1970-71, c. 12, s. 26.

PART VI - TERMINATION

27 (1) Sale of the property or any part of the common elements may be authorized,
(a) by a vote of owners who own eighty per cent, or such greater percentage as is specified in the declaration, of the common elements; and

(b) by the consent of the persons having registered claims against the property or the part of the common elements, as the case may be, created after the acceptance for registration of the declaration and description.

(2) A conveyance shall be executed by all the owners and a release or discharge shall be given by all the persons having registered claims against the property or the part of the common elements, as the case may be, created after the acceptance for registration of the declaration and description, and shall be submitted for registration together with a supplementary report on title in prescribed form showing the persons signing the same to be all the owners and persons having registered claims and the Registrar shall accept the deed or transfer so submitted for registration.

(3) Upon the acceptance for registration of the instruments mentioned in subsection (2),

(a) the government of the property or of the part of the common elements by this Act is terminated;

(b) claims against the land and interests appurtenant to the land created before the acceptance for registration of the declaration and description are as effective as if the declaration and description had not been accepted for registration; and

(c) claims against the property or the part of the common elements created after the acceptance for registration of the declaration and description are extinguished.

(4) Subject to subsection (5), the owners share the proceeds of the sale in the same proportions as their common interests.

(5) Where a sale is made under this Section, any owner who dissented may elect to have the fair market value of the
property at the time of the sale determined by arbitration under the Arbitration Act by serving notice to that effect on the corporation within ten days after the vote, and the owner who served the notice is entitled to receive from the proceeds of the sale the amount he would have received if the sale price had been the fair market value as determined by the arbitration.

(6) Where the proceeds of the sale are inadequate to pay the amount determined under subsection (5), each of the owners who voted for the sale is liable for a portion of the deficiency determined by the proportions of their common interests. 1970-71, c. 12, s. 27.

28 (1) Termination of the government of the property by this Act may be authorized,

(a) by a vote of owners who own eighty per cent, or such greater percentage as is specified in the declaration, of the common elements; and

(b) by the consent of the persons having registered claims against the property, created after the acceptance for registration of the declaration and description.

(2) Where termination of the government of the property by this Act is authorized under subsection (1), the corporation shall submit for registration a notice of termination in the prescribed form, executed by all the owners and all the persons having registered claims against the property created after the acceptance for registration of the declaration and description together with a supplementary report on title in prescribed form showing the persons signing the notice to be all the owners and persons having registered claims and the Registrar shall accept such notice for registration. 1970-71, c. 12, s. 28.

29 Upon acceptance for registration of a notice of termination under subsection (2) of Section 28 or subsection (3) or (4) of Section 23,

(a) the government of the property by this Act is terminated;
(b) the owners are tenants in common of the land and interests appurtenant to the land described in the description in the same proportions as their common interests;

(c) claims against the land and the interests appurtenant to the land described in the description created before the acceptance for registration of the declaration and description are as effective as if the declaration and description had not been accepted for registration;

(d) encumbrances against each unit and common interest created after the acceptance for registration of the declaration and description are claims against the interest of the owner in the land and interests appurtenant to the land described in the description and have the same priority as they had before the acceptance for registration of the notice of termination; and

(e) all claims against the property created after the acceptance for registration of the declaration and description, other than the encumbrances mentioned in clause (d), are extinguished. 1970-71, c. 12, s. 29.

30 (1) A corporation, any owner, or any person having an encumbrance against a unit and common interest may apply to the Court for an order terminating the government of the property by this Act.

(2) The Court may order that the government of the property by this Act be terminated if the Court is of the opinion that the termination would be just and equitable, and, in determining whether the termination would be just and equitable, the Court shall have regard to,

(a) the scheme and intent of this Act;

(b) the probability of unfairness to one or more owners if termination is not ordered; and

(c) the probability of confusion and uncertainty in the affairs of the corporation or the owners if termination is not ordered.
Where an order of termination is made under subsection (2), the Court may include in the order any provisions that the Court considers appropriate in the circumstances.

A copy of any order granted under this Section shall be submitted for registration and the Registrar shall accept such copy for registration. 1970-71, c. 12, s. 30.

PART VII - GENERAL

31 (1) The Governor in Council may by regulation provide that the Planning Act and regulations and by-laws made thereunder shall apply to a property or land intended to be included in a property only to the extent specified in the regulation.

(2) The Securities Act does not apply to the sale of units and common interests.

(3) When a property is governed by this Act, the Partition Act does not apply to that property or the owners.

(4) The corporation, unless it is the plaintiff, shall be a defendant in any action commenced under the Quiet Title Act where the land in respect of which the property right is claimed is part of a property governed by this Act. 1970-71, c. 12, s. 31.

32 (1) The Governor in Council may make regulations,

(a) classifying properties for the purposes of the regulations;

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(aa) defining the class or classes of property which may be accepted for registration by the Registrar;

(b) prescribing the duties of officers appointed under the Registry Act and of the Registrar of Joint Stock Companies for the purposes of this Act;

(c) governing the method of describing in instruments a property or any part of a property;

(d) governing surveys, structural plans, descriptions and diagrams, and prescribing procedures for their registration and amendment;

(e) requiring, in respect of any class of properties, in lieu of or in addition to the requirements of Section 11, surveys of the properties showing the units and common elements;

(f) respecting the registration and recording of declarations, descriptions, by-laws, notices of termination and other instruments;

(g) respecting the names of corporations;

(h) respecting additions to the common elements;

(i) requiring the payment of fees to officers acting under this Act and prescribing the amounts thereof;

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CHAPTER 84
Condominium Act

1.—(1) In this Act,

(a) "auditor" means a person licensed as a public accountant under the Public Accountancy Act; R.S.O. 1986, c. 408

(b) "board" means the board of directors of a corporation;

(c) "buildings" means the buildings included in a property;

(d) "bureau" means the corporation designated under section 56;

(e) "by-law" means a by-law of a corporation;

(f) "claim" includes a right, title, interest, encumbrance, or demand of any kind affecting land, but does not include the interest of an owner in his unit and common interest;

(g) "common elements" means all the property except the units;

(h) "common expenses" means the expenses of the performance of the objects and duties of a corporation and any expenses specified as common expenses in this Act or in a declaration;

(i) "common interest" means the interest in the common elements appurtenant to a unit;

(j) "common surplus" means the excess of all receipts of the corporation over the expenses;

(k) "corporation" means a corporation created by this Act;
"declarant" means the owner or owners in fee simple of the land described in the description at the time of registration of a declaration and description of the land, and includes any successor or assignee of such owner or owners but does not include a *bona fide* purchaser of a unit who actually pays fair market value or any successor or assignee of such purchaser;

"declaration" means the declaration specified in section 3, and includes any amendments;

"description" means the description specified in section 4:

"encumbrance" means a claim that secures the payment of money or the performance of any other obligation, and includes a charge under the *Land Titles Act*, a mortgage and a lien;

"mortgage" includes charge and "mortgagee" includes chargee;

"owner" means the owner or owners of the freehold estate or estates in a unit and common interest, but does not include a mortgagee unless in possession;

"prescribed" means prescribed by the regulations;

"property" means the land and interests appurtenant to the land described in the description, and includes any land and interests appurtenant to land that are added to the common elements;

"proposed unit" means land described in an agreement of purchase and sale that provides for delivery to the purchaser of a deed or transfer capable of registration after a declaration and description have been registered in respect of the land;

"records" includes those items enumerated in subsection 26 (3) and financial records prepared on behalf of the corporation, minutes of owners' meetings and board meetings, as well as any amendments to the declaration, by-laws and rules;
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(v) "registered" means registered under the *Land Titles Act* or the *Registry Act*;

(w) "regulations" means the regulations made under this Act;

(x) "special by-law" means a by-law that is not effective until it is,

(i) passed by the board, and

(ii) confirmed, with or without variation, by owners who own not less than two-thirds of the units at a meeting duly called for that purpose;

(y) "surveyor" means an Ontario land surveyor registered under the *Surveyors Act*;

(z) "unit" means a part or parts of the land included in the description and designated as a unit by the description, and comprises the space enclosed by its boundaries and all the material parts of the land within this space in accordance with the declaration and description.

(2) For the purposes of this Act, the ownership of land includes the ownership of space. R.S.O. 1980, c. 84, s. 1.

DECLARATION AND DESCRIPTION

2.—(1) A property shall comprise only freehold land and interests, if any, appurtenant to that land.

(2) A declaration and description may be registered by or on behalf of the owner in fee simple of the land described in the description.

(3) Where the land and the interests appurtenant to the land described in the description are not entirely within one land titles or registry division or not entirely under the *Land Titles Act* or the *Registry Act*, the description shall not be registered.
Effect of registration

(4) Upon registration of a declaration and description, the land and the interests appurtenant to the land described in the description are governed by this Act. R.S.O. 1980, c. 84, s. 2.

3.—(1) A declaration shall not be registered unless it is executed by the owner or owners of the land and interests appurtenant to the land described in the description and unless it contains,

(a) a statement of intention that the land and interests appurtenant to the land described in the description be governed by this Act;

(b) the consent, in the prescribed form, of every person having a registered mortgage against the land or interests appurtenant to the land described in the description;

(c) a statement, expressed in percentages, of the proportions of the common interests;

(d) a statement, expressed in percentages allocated to the units, of the proportions in which the owners are to contribute to the common expenses;

(e) an address for service and a mailing address for the corporation; and

(f) a specification of any parts of the common elements that are to be used by the owners of one or more designated units and not by all the owners.

(2) The consent mentioned in clause (1) (b) shall not be withheld by reason only of the failure of the proposed declarant to enter into a specified number of agreements of purchase and sale for the sale of proposed units.

(3) In addition to the matters mentioned in subsection (1), and in any other section in this Act, a declaration may contain,

(a) a specification of common expenses;

(b) provisions respecting the occupation and use of the units and common elements;
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(c) provisions restricting gifts, leases and sales of the units and common interests;

(d) a specification of duties of the corporation consistent with its objects; and

(e) a specification of any allocation of the obligations to repair and to maintain the units and common elements.

(4) Subject to subsection (5), the declaration may be amended only with the consent of all owners and all persons having registered mortgages against the units and common interests.

(5) Where any provision in a declaration or by-law is inconsistent with the provisions of this Act, the provisions of this Act shall prevail and the declaration or by-law is deemed to be amended accordingly.

(6) When a declaration is amended, the corporation shall register a copy of the amendment executed by all the owners and all persons having registered mortgages against the units and common interests, and until the copy is registered the amendment is ineffective.

(7) Notwithstanding subsections (4) and (6), the corporation may by resolution of the board change its address for service and its mailing address and the change does not take effect until a notice thereof in the prescribed form is registered.

(8) The corporation, on at least seven days notice to every owner and mortgagee, or an owner, on at least seven days notice to the corporation and every other owner and mortgagee, may apply to a judge of the county or district court for an order amending the declaration or description and the judge, if he is satisfied that an amendment is necessary or desirable to correct an error or inconsistency in the declaration or description or arising out of the carrying out of the intent and purpose of the declaration or description, may make the order.

(9) An amendment to a declaration or description made by an order under subsection (8) is ineffective until a certified copy of the order is registered. R.S.O. 1980, c. 84, s. 3.

4.—(1) A description shall contain,
(a) a plan of survey showing the perimeter of the horizontal surface of the land and the perimeter of the buildings;

(b) structural plans of the buildings;

(c) a specification of the boundaries of each unit by reference to the buildings;

(d) diagrams showing the shape and dimensions of each unit and the approximate location of each unit in relation to the other units and the buildings;

(e) a certificate of a surveyor that the buildings have been constructed and that the diagrams of the units are substantially accurate and substantially in accordance with the structural plans; and

(f) a description of any interests appurtenant to the land that are included in the property, prepared in accordance with the regulations.

Approval of description

(2) A description shall not be registered unless it has been approved in accordance with the regulations. R.S.O. 1980, c. 84, s. 4.

REGISTRATION

5.—(1) Every land registrar in whose office a declaration and description are registered shall keep an index in the prescribed form to be known as the "Condominium Corporations Index".

Combined office

(2) Where a land titles office is combined with a registry office, one index under subsection (1) shall be kept for all declarations and descriptions registered in the combined offices.

Condominium Register

(3) Every land registrar in whose office a declaration and description are registered shall keep a register in the prescribed form to be known as the "Condominium Register".

This Act to govern registrations, etc.

(4) Declarations, descriptions, by-laws, notices of termination, and other instruments respecting land governed by
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this Act shall be registered and recorded in the Condominium Register in accordance with this Act and the regulations, but, except as otherwise provided by this Act and the regulations, the Land Titles Act or the Registry Act, as the case may be, applies in respect of property governed by this Act. R.S.O. 1980, c. 84, s. 5.

UNITS AND COMMON ELEMENTS

6.—(1) Units and common interests are real property for all purposes.

(2) Subject to this Act, the declaration and the by-laws, each owner is entitled to exclusive ownership and use of his unit.

(3) No condition shall be permitted to exist and no activity shall be carried on in any unit or the common elements that are likely to damage the property.

(4) The corporation or any person authorized by the corporation may enter any unit at any reasonable time to perform the objects and duties of the corporation. R.S.O. 1980, c. 84, s. 6.

7.—(1) The owners are tenants in common of the common elements.

(2) An undivided interest in the common elements is appurtenant to each unit.

(3) The proportions of the common interests are those expressed in the declaration.

(4) Each owner may make reasonable use of the common elements subject to this Act, the declaration, the by-laws and the rules.

(5) The ownership of a unit shall not be separated from the ownership of the common interest, and any instrument that purports to separate the ownership of a unit from a common interest is void.

(6) Except as provided by this Act, the common elements shall not be partitioned or divided.
(7) No encumbrance is enforceable against the common elements after the declaration and description are registered.

(8) Where, but for subsection (7), an encumbrance would be enforceable against the common elements, the encumbrance is enforceable against all the units and common interests.

(9) Any unit and common interest may be discharged from such an encumbrance by payment to the claimant of a portion of the sum claimed, determined by the proportions specified in the declaration for sharing the common interests.

(10) Upon payment of a portion of the encumbrance sufficient to discharge a unit and common interest, and upon demand, the claimant shall give to the owner a discharge of that unit and common interest in accordance with the regulations.

(11) For the purposes of municipal assessment and taxation, each unit and common interest constitute a parcel, and the common elements do not constitute a parcel except for those parts of the common elements that are leased for business purposes under section 9 upon which the lessee carries on an undertaking for gain that will constitute separate parcels for business assessment under the Assessment Act.

(12) For the purpose of determining liability resulting from breach of the duties of an occupier of land, the corporation shall be deemed to be the occupier of the common elements and the owners shall be deemed not to be occupiers of the common elements. R.S.O. 1980, c. 84, s. 7.

EASEMENTS

8.—(1) The following easements are appurtenant to each unit:

1. Where a building or any part of a building,

(a) moves after registration of the declaration and description; or

(b) after having been damaged and repaired, is not restored to the position occupied at the time of registration of the declaration and description,
an easement for exclusive use and occupation in
accordance with this Act, the declaration and the
by-laws, over the space of the other units and
common elements that would be space included in
the unit if the boundaries of the unit were deter-
mined by the position of the buildings from time to
time after registration of the description and not at
the time of registration.

2. An easement for the provision of any service through
any installation in the common elements or any other
unit.

3. An easement for support by the common elements
and any other unit capable of providing support.

(2) The following easements are appurtenant to the com-
mon elements:

1. An easement for the provision of any service through
any installation in any unit.

2. An easement for support by any unit capable of
providing support. R.S.O. 1980, c. 84, s. 8.

9.—(1) The corporation may, by special by-law,
(a) lease any part of the common elements, except any
part that the declaration specifies is to be used by
the owners of one or more designated units and not
by all the owners; and

(b) grant or transfer an easement or licence through
the common elements.

(2) A lease or grant or transfer or an easement or licence
mentioned in subsection (1), signed by the authorized officers
of the corporation under its seal, affects the interest of every
owner in the common elements as if the lease, grant or
transfer had been executed by him, and shall have attached
thereto an affidavit of one of the officers stating that the
lease, grant or transfer was authorized by a special by-law
of the corporation. R.S.O. 1980, c. 84, s. 9.

CORPORATION

10.—(1) The registration of a declaration and description
creates a corporation without share capital whose members
are the owners from time to time.
10 Chap. 84 CONDOMINIUM Sec. 10 (2)

Name of corporation

(2) The land registrar shall assign a name to each corporation or proposed corporation in accordance with the regulations.

R.S.O. 1980, c. 84, s. 10.

Corporation seal

(3) The Corporations Act, the Corporations Information Act and the provisions respecting mortmain of the Mortmain and Charitable Uses Act do not apply to the corporation. R.S.O. 1980, c. 84, s. 10.

Idem

11.—(1) The corporation shall have a seal that shall be adopted and may be changed by resolution of the directors.

(2) The name of the corporation shall appear in legible characters on the seal. R.S.O. 1980, c. 84, s. 11.

Objects

12.—(1) The objects of the corporation are to manage the property and any assets of the corporation.

(2) The corporation has a duty to control, manage and administer the common elements and the assets of the condominium corporation.

Corporation duty

(3) The corporation has a duty to effect compliance by the owners with this Act, the declaration, the by-laws and the rules.

(4) The declaration or the by-laws may specify duties of the corporation consistent with its objects, responsibilities and duties.

Duties

(5) Each owner and each person having a registered mortgage against a unit and common interest has the right to the performance of any duty of the corporation specified by this Act, the declaration, the by-laws and the rules. R.S.O. 1980, c. 84, s. 12.

Right to performance of duties

13.—(1) The corporation may own, acquire, encumber and dispose of real and personal property for the use and enjoyment of the property.

(2) The owners share the assets of the corporation in the same proportions as the proportions of their common interests in accordance with this Act, the declaration and the by-laws. R.S.O. 1980, c. 84, s. 13.

Real and personal property

14.—(1) The corporation after giving written notice to all owners and mortgagees may, on its own behalf and on behalf of any owner, sue for and recover damages and costs
in respect of any damage to common elements, the assets of
the corporation or individual units, and the legal and court
costs in any such actions brought in whole or in part on
behalf of any owners in respect of their units shall be borne
by those owners in the proportion in which their interests
are affected.

(2) The corporation after giving written notice to all
owners and mortgagees may sue on its own behalf and on
behalf of any owner with respect to the common elements and
any units, notwithstanding that the corporation was not a
party to the contract in respect of which the action is brought,
and the legal and court costs in an action brought in whole or
in part on behalf of any owners in respect of their units
shall be borne by those owners in the proportion in which
their interests are affected.

(3) The notice referred to in subsections (1) and (2) is not
required to be given in respect of an action brought in
the small claims court.

(4) Any judgment for payment in favour of the corporation
in an action brought on its own behalf is an asset of the
corporation.

(5) The corporation may, as representative of the owners
of the units, be sued in respect of any matter relating to the
common elements or assets of the corporation.

(6) Where an action is commenced on or after the 1st day of
June, 1979, a judgment for the payment of money against the
corporation is also a judgment against each owner at the time of
judgment for a portion of the judgment determined by the pro­
portions specified in the declaration for sharing the common'
interests.

(7) Where an action has been commenced before the 1st day of
June, 1979, a judgment for the payment of money against the
corporation is also a judgment against each owner at the time the
cause of action arose for a portion of the judgment determined by
the proportions specified in the declaration for sharing the com­
mon expenses. R.S.O. 1980, c. 84, s. 14.

15.—(1) The affairs of the corporation shall be managed by a board of directors, consisting of three persons or such
greater number as the by-laws may provide, elected by the
owners.
(2) A corporation may by by-law increase or, subject to subsection (1), decrease the number of the directors as set out in its by-laws.

(3) No person under eighteen years of age shall be a director of the corporation.

(4) No undischarged bankrupt or mentally incompetent person shall be a director and if a director becomes a bankrupt or a mentally incompetent person he thereupon ceases to be a director.

(5) A person who is elected or appointed a director is not a director unless,

(a) he was present at the meeting when he was elected or appointed and did not refuse at the meeting to act as a director; or

(b) when he was not present at the meeting when he was elected or appointed, he consented to act as director in writing before his election or appointment or within ten days thereafter.

(6) For the purposes of subsection (5), a person who is elected or appointed as director and refuses under clause (a) of that subsection or fails to consent under clause (b) of that subsection shall be deemed not to have been elected or appointed as a director.

(7) The term of the members of the board shall be three years or such lesser period as the by-laws may provide, but the directors may continue to act until their successors are elected, and directors are eligible for re-election.

(8) Any director may be removed before the expiration of his term by a vote of owners who together own a majority of the units and the owners may elect, in accordance with the by-laws dealing with the election of directors, any person qualified to be a member of the board for the remainder of the term of the director removed.

(9) If a vacancy in the membership of the board occurs, other than by way of removal under subsection (8) or as a result of the number of directors being increased, subject to subsection (11), the majority of the remaining members of the board may appoint any person qualified to be a member of the board to fill the vacancy until the next annual meeting at which time the vacancy shall be filled by election by the owners.
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(10) Where the number of directors is increased, the vacancies resulting from such increase shall only be filled by election at a meeting of the owners duly called for that purpose.

(11) When there is not a quorum of directors in office, the director or directors then in office shall forthwith call a meeting of owners to fill the vacancies, and, in default or if there are no directors then in office, the meeting may be called by any owner. R.S.O. 1980, c. 84, s. 15.

16.—(1) A quorum for the transaction of business is a majority of the members of the board or such greater number as the by-laws may provide.

(2) No business of a corporation shall be transacted by its board except at a meeting of directors at which a quorum of the board is present.

(3) Where there is a vacancy or vacancies in the board, the remaining directors may exercise all the powers of the board so long as a quorum of the board remains in office.

(4) In addition to any other provision in the by-laws of a corporation for calling meetings of directors, a quorum of the directors may, at any time, call a meeting of the directors for the transaction of any business, the general nature of which is specified in the notice calling the meeting.

(5) In the absence of any other provision in that behalf in the by-laws of the corporation, at least ten days written notice of the time and place for the holding of the meeting shall be given to every director of the corporation, personally or by prepaid mail, addressed to him at his latest address as shown on the records of the corporation. R.S.O. 1980, c. 84, s. 16.

17.—(1) Every director of a corporation who has, directly or indirectly, any interest in any contract or transaction to which the corporation is or is to be a party, other than a contract or transaction in which his interest is limited solely to his remuneration as a director, officer or employee, shall declare his interest in such contract or transaction at a meeting of the directors of the corporation and shall at that time disclose the nature and extent of such interest including, as to any contract or transaction involving the purchase or sale of property by or to the corporation, the cost of the property to the purchaser and the cost thereof to the seller, if acquired by the seller within five years before the date of the contract or transaction, to the extent
(2) Subsection (1) does not require the disclosure of any interest in any contract or transaction unless the interest and the contract or transaction are both material.

(3) The declaration required in subsection (1) shall be made at the meeting of the directors at which the proposed contract or transaction is first considered, or if the director is not at the date of the meeting interested in the proposed contract or transaction, at the next meeting of the directors held after he becomes so interested, or if the director becomes interested in a contract or transaction after it is entered into, at the first meeting of the directors held after he becomes so interested, or if a contract or a proposed contract or transaction is one that in the ordinary course of the corporation’s business would not require approval by the directors or owners, at the first meeting of the directors held after the director becomes aware of it.

(4) If a director has made a declaration and disclosure of his interest in a contract or transaction in compliance with this section and has not voted in respect of the contract or transaction at the meeting of the directors of the corporation, the director, if he was acting honestly and in good faith at the time the contract or transaction was entered into, is not by reason only of his holding the office of director accountable to the corporation or to its owners for any profit or gain realized from the contract or transaction, and the contract or transaction is not voidable by reason only of the director’s interest therein.

(5) Notwithstanding anything in this section, a director, if he was acting honestly and in good faith, is not accountable to the corporation or to the owners for any profit or gain realized from any such contract or transaction by reason only of his holding the office of director, and the contract or transaction is not by reason only of the director’s interest therein voidable,

(a) if the contract or transaction is confirmed or approved by at least two-thirds of the votes cast at a meeting of the owners duly called for that purpose; and

(b) if the nature and extent of the director’s interest in the contract or transaction are declared and disclosed in reasonable detail in the notice calling the meeting.
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(6) For the purposes of this section, a general notice to the directors by a director declaring that he is a director or officer of or has a material interest in a person that is a party to a contract or proposed contract with the corporation is a sufficient declaration of interest in relation to any contract so made.  R.S.O. 1980, c. 84, s. 17.

18.—(1) A corporation shall hold an annual meeting of the owners not more than three months after the registration of the declaration and description, and subsequently not more than fifteen months after the holding of the last preceding annual meeting, and at such meeting any owner or any mortgagee entitled to vote shall have an opportunity to raise any matter relevant to the affairs and business of the corporation.

(2) The board, or any mortgagee holding mortgages on not less than 15 per cent of the units, may at any time call a meeting of the owners of the corporation for the transaction of any business, the nature of which shall be specified in the notice calling the meeting.

(3) Unless otherwise provided in this Act, a quorum for the transaction of business at a meeting of owners is those owners present in person or represented by proxy owning 33\(\frac{1}{3}\) per cent of the units.  R.S.O. 1980, c. 84, s. 18.

19.—(1) The board shall, upon receipt of a requisition in writing made by owners who together own at least 15 per cent of the units, call and hold a meeting of the owners and if the meeting is not called and held within thirty days of the receipt of the requisition, any of the requisitionists may call the meeting, and in such case, the meeting shall be held within sixty days of receipt of the requisition.

(2) The requisition shall state the nature of the business to be presented at the meeting and shall be signed by the requisitionists and deposited at the address for service of the corporation.  R.S.O. 1980, c. 84, s. 19.

20.—(1) At least ten days written notice of every meeting of the owners specifying the place, the date and the hour thereof and the nature of the business to be presented shall be given to each owner or mortgagee entitled to vote, personally or by prepaid mail addressed to him at the address provided under subsection (2).

(2) The corporation shall maintain a record upon which shall be entered each owner or mortgagee who notifies the corporation of his entitlement to vote and of his address for service, and the notice of a meeting required by subsection (1)
shall be deemed to be sufficiently given if given in accordance with subsection (1) to those persons entered on the record twelve days before the date of the meeting.

(3) A mortgagee who receives a notice shall, in order to be entitled to exercise the right of the owner to vote or to consent, notify the corporation and the owner of his intention to exercise such right at least two days before the date specified in the notice for the meeting. R.S.O. 1980, c. 84, s. 20.

21. The corporation shall keep adequate records, and any owner or his agent duly authorized in writing may inspect the records on reasonable notice and at any reasonable time. R.S.O. 1980, c. 84, s. 21.

22.—(1) All voting by owners shall be on the basis of one vote per unit and, where two or more persons entitled to vote in respect of one unit disagree on their vote, the vote in respect of that unit shall not be counted.

(2) On a show of hands or on a poll, votes may be given either personally or by proxy.

(3) An instrument appointing a proxy shall be in writing under the hand of the appointer or his attorney, and may be either general or for a particular meeting.

(4) A proxy need not be an owner.

(5) Except where, under this Act or the by-laws of the corporation, a unanimous vote of all the owners is required, an owner is not entitled to vote at any meeting if any contributions payable in respect of his unit are in arrears for more than thirty days prior to the meeting.

(6) Unless otherwise provided in this Act, all questions proposed for the consideration of the owners at a meeting of owners shall be determined by a majority of the votes cast.

(7) No owner is entitled to a vote in respect of a unit that is intended for parking or storage purposes. R.S.O. 1980, c. 84, s. 22.

23.—(1) A corporation shall have a president and a secretary and such other officers as are provided for by by-law or by resolution of the directors and the same person may hold two or more offices.
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(2) In the absence of other provisions in that behalf in the by-laws, the directors,

(a) shall elect the president from among themselves;

(b) shall appoint or elect the secretary; and

(c) may appoint or elect one or more vice-presidents or other officers. R.S.O. 1980, c. 84, s. 23.

24.—(1) Every director and officer of a corporation shall exercise the powers and discharge the duties of his office honestly and in good faith.

(2) The acts of a member of the board or an officer of the board are valid notwithstanding any defect that may afterwards be discovered in his election or qualifications. R.S.O. 1980, c. 84, s. 24.

25.—(1) Subject to subsection (2), the by-laws of a corporation may provide that every director and officer of the corporation and his heirs, executors, administrators and other legal personal representatives may from time to time be indemnified and saved harmless by the corporation from and against,

(a) any liability and all costs, charges and expenses that he sustains or incurs in respect of any action, suit or proceeding that is proposed or commenced against him for or in respect of anything done or permitted by him in respect of the execution of the duties of his office; and

(b) all other costs, charges and expenses that he sustains or incurs in respect of the affairs of the corporation.

(2) No director or officer of a corporation shall be indemnified by the corporation in respect of any liability, costs, charges or expenses that he sustains or incurs in or about any action, suit or other proceeding as a result of which he is adjudged to be in breach of any duty or responsibility imposed upon him under this Act or under any other statute unless, in an action brought against him in his capacity as director or officer, he has achieved complete or substantial success as a defendant.

(3) A corporation may purchase and maintain insurance for the benefit of a director or officer thereof except insurance against a liability, cost, charge or expense of the director or
officer incurred as a result of a contravention of subsection 24 (1). R.S.O. 1980, c. 84, s. 25.

26.—(1) The board elected at a time when the declarant owns a majority of the units shall, not more than twenty-one days after the declarant ceases to be the registered owner of a majority of the units, call a meeting of the owners to elect a new board, and such meeting shall be held within twenty-one days after the calling of the meeting.

(2) If the meeting referred to in subsection (1) is not called within the time provided for by that subsection, any owner or any mortgagee entitled to vote may call the meeting.

(3) At the meeting required under subsection (1), the declarant shall give to the board elected at that meeting,

(a) the seal of the corporation;

(b) the minute book for the corporation, containing the most current copies of the declaration, by-laws, rules and regulations and any amendments thereto;

(c) copies of all agreements entered into by the corporation or the declarant or his representatives on behalf of the corporation, including the management contracts, deeds, leases, licences and those items set out in subsection 52 (6);

(d) a record maintained under subsection 20 (2);

(e) the existing warranties and guarantees for all the equipment, fixtures and chattels included in the sale of either the units or common elements that are not protected by warranties and guarantees given directly to a unit purchaser;

(f) the as-built architectural, structural, engineering, mechanical, electrical and plumbing plans;

(g) the original specifications indicating thereon all material changes;

(h) the plans for underground site service, site grading, drainage and landscaping together with cable television drawings if available;

(i) such other available plans and information not mentioned in clause (f), (g), or (h) but relevant to future repair or maintenance of the property;
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(3) an unaudited financial statement prepared as at a date not earlier than thirty days prior to the meeting;

(4) a table depicting the maintenance responsibilities and indicating whether the corporation or the unit owners are responsible;

(l) bills of sale or transfers for all items that are assets of the condominium corporation but not part of the real property;

(m) a list detailing current replacement costs and life expectancy under normal maintenance conditions of all major capital items in the property, including, where applicable, those items set out in subsection 36 (1); and

(n) all financial records of the corporation and of the declarant relating to the operation of the corporation from the date of registration of the declaration and the description.

(4) The declarant shall give to the board within sixty days after the meeting required under subsection (1) an audited financial statement prepared as at the date of the meeting required under subsection (1). R.S.O. 1980, c. 84, s. 26.

27.—(1) The corporation shall obtain and maintain insurance on its own behalf and on behalf of the owners of the units and common elements, excluding improvements and betterments made or acquired by an owner, against major perils to the replacement cost thereof, and against such other perils as may be specified by the declaration or by-laws, and for this purpose the corporation shall be deemed to have an insurable interest in the units and common elements.

(2) Any payment by an insurer under a policy of insurance entered into under subsection (1) shall, notwithstanding the terms of the policy, be paid to the order of insurance trustees, if any, or otherwise shall be paid to or to the order of the corporation and, subject to subsection 42 (2), the corporation shall forthwith use the proceeds for the repair or replacement of the damaged units and common elements so far as the same may be effected lawfully.

(3) Insurance obtained and maintained by a corporation under subsection (1) shall be deemed not to be other insurance for the purpose of any prohibition of or condition against other insurance in a policy of an owner insuring against loss of or damage to his unit or his interest in the common ele-
ments and covering only to the extent that the insurance placed by the corporation is inapplicable, inadequate or ineffective.

(4) Notwithstanding section 127 of the Insurance Act or the provisions of the policy, a policy of insurance issued under subsection (1) and any other policy of insurance, except another policy issued under subsection (1), are not liable to be brought into contribution with each other.

(5) The corporation shall obtain and maintain insurance against its liability resulting from breach of duty as occupier of the common elements or arising from the ownership, use or operation, by or on its behalf, of boilers, machinery, pressure vessels and motor vehicles, in addition to such other insurance as may be specified in the declaration or by-laws.

(6) Notwithstanding the terms of a policy issued under subsection (1), no act of any person shall be deemed to be a breach of the conditions of the policy where such act is prejudicial to the interests of the corporation or the owners.

(7) A policy of insurance issued under subsection (1) shall be deemed to include provision for sixty days notice sent by registered mail to be given by the insurer to the corporation and to the insurance trustees, if any, in the event of termination of the insurance by the insurer.

(8) In the event that any provision of a policy issued under subsection (1) or any part of the Insurance Act is in conflict or inconsistent with this section or any part thereof, the provisions of this section shall apply.

(9) Nothing in this section shall be construed to restrict the capacity of a corporation, an owner or any other person to obtain and maintain insurance in respect of any insurable interest.

(10) Notwithstanding any provision in a mortgage and notwithstanding subsection 6 (2) of the Mortgages Act, a mortgagee shall not require that any money received on an insurance of the property or any part thereof be applied in or towards the discharge of the money due under his mortgage and any such requirement is void.

(11) For the purposes of subsection (1), “major perils” means the perils of fire, lightning, smoke, windstorm, hail, explosion, water escape, strikes, riots or civil commotion, impact by aircraft and vehicles, vandalism and malicious mischief. R.S.O. 1980, c. 84, s. 27.
28.—(1) The board may pass by-laws, not contrary to this Act or to the declaration,

(a) to govern the number, qualification, nomination, election, term of office and remuneration of the directors;

(b) to regulate the meeting, quorum and functions of the board;

(c) to govern the appointment, remuneration, functions, duties and removal of agents, officers and employees of the corporation and the security, if any, to be given by them to it;

(d) to govern the management of the property;

(e) to govern the maintenance of the units and common elements;

(f) to govern the use and management of the assets of the corporation;

(g) specifying duties of the corporation;

(h) to govern the assessment and collection of contributions towards the common expenses;

(i) authorizing the borrowing of money to carry out the objects and duties of the corporation; and

(j) respecting the conduct generally of the affairs of the corporation.

(2) Subject to subsection (5), a by-law passed under subsection (1) is not effective until it is confirmed, with or without variation, by owners who own not less than 51 per cent of the units at a meeting duly called for that purpose.

(3) A by-law relating to the remuneration of a director or directors shall fix the remuneration and the period for which it is to be paid.

(4) The by-laws shall be reasonable and consistent with this Act and the declaration.
When a by-law or special by-law is made by the corporation, the corporation shall register a copy of the by-law or special by-law together with a certificate executed by the corporation that the by-law was made in accordance with this Act, the declaration and the by-laws, and until the copy and certificate are registered the by-law is ineffective. R.S.O. 1980, c. 84, s. 28.

**RULES GOVERNING USE OF COMMON ELEMENTS**

29.—(1) The board may make rules respecting the use of common elements and units or any of them to promote the safety, security or welfare of the owners and of the property or for the purpose of preventing unreasonable interference with the use and enjoyment of the common elements and of other units.

(2) The rules shall be reasonable and consistent with this Act, the declaration and the by-laws.

(3) The rules shall be complied with and enforced in the same manner as the by-laws.

(4) Subject to subsection (5), any rule made under subsection (1) shall be effective thirty days after notice thereof has been given to each owner unless the board is in receipt of a requisition in writing made under section 19 requiring a meeting of owners to consider the rules.

(5) If a meeting of owners is required, the rule made under subsection (1) shall become effective only upon approval at such meeting of owners.

(6) The owners may at any time after a rule becomes effective amend or repeal a rule at a meeting of owners duly called for that purpose. R.S.O. 1980, c. 84, s. 29.

30. No corporation or servant or agent of a corporation shall restrict reasonable access to the property by candidates, or their authorized representatives, for election to the House of Commons, the Legislative Assembly or any office in a municipal government or school board for the purpose of canvassing or distributing election material. R.S.O. 1980, c. 84, s. 30.

**OBLIGATION OF OWNERS AND OCCUPIERS**

31.—(1) Each owner is bound by and shall comply with this Act, the declaration, the by-laws and the rules.
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(2) Each owner has a right to the compliance by the other owners with this Act, the declaration, the by-laws and the rules.

(3) The corporation, and every person having an encumbrance against any unit and common interest, has a right to the compliance by the owners with this Act, the declaration, the by-laws and the rules.

(4) Each person in occupation of a proposed unit is bound by and shall comply with the rules proposed by the proposed declarant where those rules are reasonable and consistent with this Act.

(5) Each person in occupation of a proposed unit has a right to the compliance by every other occupant of a proposed unit with the rules proposed by the proposed declarant.

(6) The proposed declarant has a duty, until registration of the declaration and description, to effect compliance by occupiers of proposed units with the rules proposed by the declarant. R.S.O. 1980, c. 84, s. 31.

32.—(1) The owners shall contribute towards the common expenses in the proportions specified in the declaration.

(2) Any common surplus in a corporation shall be applied either against future common expenses or paid into the reserve fund, but shall not, other than on termination, be distributed to the owners or mortgagees.

(3) The obligation of an owner to contribute towards the common expenses shall not be avoided by waiver of the right to use the common elements or by abandonment.

(4) Where an owner defaults in his obligation to contribute to the corporation towards the common expenses as provided under subsection (1) or subsection 41 (7), the corporation has a lien for the unpaid amount against his unit and its appurtenant common interest together with all reasonable costs, charges and expenses incurred by the corporation in connection with the collection or attempted collections of the unpaid amount.

(5) The lien mentioned in subsection (4) expires three months after the default that gave rise to the lien first occurred unless the corporation within that time registers a notice of lien in the prescribed form, and, where the notice is
registered in accordance with subsection 33 (5), no further notice or registration is required in respect of default in payment occurring or continuing after registration.

(6) The lien may be enforced in the same manner as a mortgage.

(7) Upon payment of the unpaid amount together with all reasonable costs, charges and expenses incurred by the corporation in connection with the collection or attempted collection of the unpaid amount, and upon demand, the corporation shall give the owner a discharge in the prescribed form.

(8) Any person acquiring or proposing to acquire an interest in a unit from an owner may request the corporation to give a certificate in the prescribed form in respect of the common expenses of the owner and of default in payment thereof, if any, by the owner, together with such statements and information as are prescribed by the regulations, and the certificate binds the corporation as against the person requesting the certificate in respect of any default or otherwise shown in the certificate, as of the day it is given.

(9) The corporation shall give the certificate and the statements and information referred to in subsection (8) within seven days after its receipt of the request therefor and, where the corporation fails to give the certificate, statements and information within the time prescribed, the corporation shall be deemed, as against the person requesting the certificate, to have given a certificate stating no default.

(10) The corporation may charge a fee for providing the certificate, statements and information referred to in subsection (8), in the amount prescribed by regulation. R.S.O. 1980, c. 84, s. 32.

38.—(1) Where a lien created by subsection 32 (4) is in respect of a unit for residential purposes, that lien has priority over every registered and unregistered encumbrance notwithstanding that such encumbrance existed prior to the lien arising.

(2) Subsection (1) does not apply,

(a) to a lien arising before the 1st day of January, 1978;

(b) in respect of a claim of the Crown other than by way of a mortgage;
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(c) in respect of a claim for taxes, charges, rates or assessments levied or recoverable under the Municipal Act, the Education Act, the Local Roads Boards Act, the Statute Labour Act or the Local Improvement Act; or

(d) to such lien or claim that may be designated by regulation.

(3) Every mortgage of a unit for residential purposes shall be deemed to contain a provision that,

(a) the mortgagee has the right to collect the owner's contribution towards common expenses and shall forthwith pay any amount so collected to the corporation on behalf of the unit owner;

(b) the owner's default in the payment of common expenses shall constitute default under the mortgage; and

(c) the mortgagee shall have the right to pay the owner's contribution towards common expenses that shall from time to time fall due and be unpaid in respect of the mortgaged premises and that such payments together with all reasonable costs, charges and expenses incurred in respect thereto, shall be added to the debt thereby secured and shall be payable forthwith with interest at the rate payable on the mortgage, and, if after demand the owner fails to fully reimburse the mortgagee, the mortgage shall immediately become due and payable at the option of the mortgagee.

(4) A corporation shall, where so requested by the holder of a mortgage on a unit for residential purposes, provide, free of charge, to the person making the request a written statement setting out, in respect of the unit, the common expenses of the owner and all payments thereof in default.

(5) Where a lien arises in respect of a unit for residential purposes, the corporation shall, on or before the day a notice of lien is registered, give notice of the lien to every encumbrancer whose encumbrance is registered against the title of the unit, by personal service of the notice or by sending the notice by registered prepaid post addressed to the encumbrancer at his last known address.

(6) Where notice of lien is not given as provided in subsection (5), then subsection (1) ceases to apply three months after
the default that gave rise to the lien first occurred, provided that where notice is given after registration of notice of lien then the corporation may register another notice of lien, but subsection (1) shall continue to apply to any lien which arose not earlier than three months before the last registration of notice of lien. R.S.O. 1980, c. 84, s. 33.

AUDITORS AND FINANCIAL STATEMENTS

84.—(1) The owners at their first meeting after the 1st day of June, 1979 shall appoint one or more auditors to hold office until the close of the next annual meeting and, if the owners fail to do so, the board shall forthwith make such appointment or appointments.

(2) The owners shall at each annual meeting appoint one or more auditors to hold office until the close of the next annual meeting and, if an appointment is not so made, the auditor in office continues in office until a successor is appointed.

(3) The directors may fill any casual vacancy in the office of auditor, but, while such vacancy continues, the surviving or continuing auditor, if any, may act.

(4) The owners may, by resolution passed by a majority of the votes cast at a meeting duly called for that purpose, remove an auditor before the expiration of his term of office, and shall by a majority of the votes cast at that meeting appoint another auditor in his stead for the remainder of his term.

(5) Before calling a meeting for the purpose of removing an auditor, the corporation shall, fifteen days or more before the giving of the notice of the meeting, give to the auditor,

(a) written notice of the intention to call the meeting, specifying therein the date on which the notice of the meeting is proposed to be mailed; and

(b) a copy of all material proposed to be sent to owners in connection with the meeting.

(6) An auditor has the right to make to the corporation, three days or more before the mailing of the notice of the meeting, representations in writing, concerning,

(a) his proposed removal as auditor;

(b) the appointment or election of another person to fill the office of auditor; or
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(c) his resignation as auditor,

and the corporation, at its expense, shall forward with the notice of the meeting, a copy of such representations to each person entitled to receive notice of the meeting.

(7) The remuneration of an auditor appointed by the owners shall be fixed by the owners, or by the board if it is authorized so to do by the owners, and the remuneration of an auditor appointed by the board shall be fixed by the board.

(8) If for any reason no auditor is appointed, the court may, on the application of an owner, appoint one or more auditors to hold office until the close of the next annual meeting and may fix the remuneration to be paid by the corporation for his or their services.

(9) The corporation shall give notice in writing to an auditor of his appointment forthwith after the appointment is made.

(10) No person shall be appointed or act as auditor of a corporation who is a director, officer, employee or manager of the corporation, has an interest in contracts of the corporation, or is a partner, employer or employee of any director, officer, employee or manager of the corporation.

(11) This section does not apply to a corporation where the property consists of less than twenty-five units for residential purposes. R.S.O. 1980, c. 84, s. 34.

35.—(1) The auditor shall make such examination as will enable him to report to the owners as required by subsection (2).

(2) The auditor shall make a report to the owners on the financial statement, to be laid before the corporation at any annual meeting during his term of office, and shall state in his report whether in his opinion the financial statement referred to therein presents fairly the financial position of the corporation and the results of its operations for the period under review in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding period, if any.

(3) Where the report under subsection (2) does not contain the unqualified opinion required thereby, the auditor shall state in his report the reasons therefor.
(4) Where facts come to the attention of the board or officers of the corporation that if known prior to the date of the last annual meeting of owners would have required a material adjustment to the financial statement presented to the meeting, the board or officers shall communicate such facts to the auditor who reported to the owners under this section and the board shall forthwith amend the financial statement and send it to the auditor.

(5) On the receipt of facts furnished under subsection (4) or from any other source, the auditor shall, if in his opinion it is necessary, amend his report with respect to the financial statement in accordance with subsection (2) and the board or, if it fails to do so within a reasonable time, the auditor, shall mail or deliver such amended report to the owners.

(6) The financial statement shall contain a statement of changes in net assets or a statement of source and application of funds, and the auditor shall include in his report a statement whether, in his opinion, in effect, the statement of changes in net assets or the statement of source and application of funds presents fairly the information shown therein.

(7) The auditor in his report shall make such statements as he considers necessary if,

(a) the corporation's financial statement is not in agreement with its accounting records;

(b) the corporation's financial statement is not in accordance with the requirements of this Act;

(c) he has not received all the information and explanations that he has required; or

(d) proper accounting records have not been kept, so far as appears from his examination.

(8) The auditor of a corporation has right of access at all times to all records, documents, accounts and vouchers of the corporation and is entitled to require from the directors, officers and employees of the corporation such information and explanations as, in his opinion, are necessary to enable him to report as required by subsection (2).

(9) The auditor of a corporation is entitled to attend any meeting of owners and to receive all notices and other communications related to any such meeting that an owner is entitled to receive and to be heard at any such meeting that
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he attends on any part of the business of the meeting that concerns him as auditor.

(10) At any meeting of owners, the auditor, if present, shall answer inquiries directed to him concerning the basis upon which he formed the opinion stated in the report made under subsection (2).

(11) The financial statement shall be approved by the board and the approval shall be evidenced by the signature at the foot of the balance sheet by two of the directors duly authorized to sign, and the auditor’s report shall be attached to or accompany the financial statement.

(12) The corporation shall, ten days or more before the date of the annual meeting of owners, send by prepaid mail or deliver to each owner at his latest address as shown on the records of the corporation and shall file with the bureau a copy of the financial statement and a copy of the auditor’s report.

(13) The board shall lay before each annual meeting of owners,

(a) a financial statement made in accordance with generally accepted accounting principles;

(b) the report of the auditor to the owners; and

(c) such further information respecting the financial position of the corporation as the by-laws of the corporation require.  R.S.O. 1980, c. 84, s. 35.

RESERVE FUND

36.—(1) In this Act and the regulations, the declaration, by-laws and financial statements prepared in accordance with this Act, the declaration or by-laws, “reserve fund” means a fund set up by the corporation in a special account for major repair and replacement of common elements and assets of the corporation including where applicable without limiting the generality of the foregoing, roofs, exteriors of buildings, roads, sidewalks, sewers, heating, electrical and plumbing systems, elevators, laundry, recreational and parking facilities.

(2) The corporation shall establish and maintain one or more reserve funds and shall collect from the owners, as part of their contribution towards common expenses, amounts that, calculated on the basis of expected repair and replacement costs and life expectancy of things comprising the common elements and the assets of the corporation,
are reasonably expected to provide sufficient funds for major repair and replacement of common elements and assets of the corporation, but in no event shall the contributions to the reserve fund or funds be less than 5 per cent of the amount required for contributions to the common expenses exclusive of the reserve fund.

(3) On and after the 1st day of June, 1982, the contribution to the reserve fund or funds shall be not less than 10 per cent of the amount required for contributions to the common expenses exclusive of the reserve fund.

(4) Any fund set up for any of the purposes mentioned in subsection (1) shall be deemed to be a reserve fund notwithstanding that it may not be so designated.

(5) No part of a reserve fund shall be used except for the purposes for which the fund was established.

(6) The amount of a reserve fund shall constitute an asset of the corporation and shall not be distributed to any owner except on termination of the corporation.

(7) The bureau may, upon being satisfied that the corporation has sufficient reserve funds, exempt the corporation from the requirements set out in subsections (2) and (3) upon such terms and conditions and for such period of time as the bureau considers proper.

(8) Subsection (7) does not come into force until a day to be named by proclamation of the Lieutenant Governor. R.S.O. 1980, c. 84, s. 36.

AUDIT COMMITTEE

37.—(1) Where the number of directors of a corporation is more than six, the directors may elect annually from among their number a committee to be known as the audit committee to be composed of not fewer than three directors, of whom a majority shall not be officers or employees of the corporation, to hold office until the next annual meeting of the owners.

(2) The auditor shall submit the financial statement to the audit committee for its review and the financial statement shall thereafter be submitted to the board.

(3) The auditor has the right to appear before and be heard at any meeting of the audit committee and shall appear before the audit committee when required to do so by the committee.
(4) Upon the request of the auditor, the audit committee shall convene a meeting of the committee to consider any matters the auditor believes should be brought to the attention of the board or members. R.S.O. 1980, c. 84, s. 37.

MODIFICATIONS OF COMMON ELEMENTS AND ASSETS

38.—(1) The corporation may by a vote of owners who own 80 per cent of the units make any substantial addition, alteration or improvement to or renovation of the common elements or may make any substantial change in the assets of the corporation, and the corporation may by a vote of the owners make any other addition, alteration or improvement to or renovation of the common elements or may make any other change in the assets of the corporation.

(2) A grant or transfer of an easement to the corporation is as effective as if the corporation owns land capable of being benefitted by the easement.

(3) The cost of any addition, alteration or improvement to or renovation of the common elements and the cost of any change in the assets of the corporation are common expenses.

(4) If any substantial addition, alteration or improvement to or renovation of the common elements is made, or if any substantial change in the assets of the corporation is made, the corporation must, on demand of any owner who dissented, made within ten days after the date of the vote referred to in subsection (1), purchase his unit and common interest.

(5) Where the corporation and the owner who dissented do not agree as to the purchase price, the owner who dissented may elect to have the fair market value of his unit and common interest determined by arbitration under the Arbitrations Act by serving a notice to that effect on the corporation. R.S.O. 1980, c. 84, s. 38.

AGREEMENTS

39.—(1) The corporation may, by by-law, terminate, on giving sixty days notice in writing, any agreement between the corporation and any person for the management of the property entered into at a time when the majority of the members of the board were elected when the declarant was the registered owner of a majority of the units.

(2) Every agreement for the provision of services on a continuing basis, every lease of the common elements or part
thereof for business purposes and every agreement for the
provision of recreation facilities to the corporation on other
than a non-profit basis entered into by a corporation after the
1st day of June, 1979 and at a time when the majority of the
members of the board were elected when the declarant was
the registered owner of a majority of the units that does not
expire within twelve months after its effective date shall be
deemed to expire twelve months after its effective date unless,
within the twelve month period, the agreement is ratified by
the board at a time when the majority of the board members
were elected after the declarant ceased to be the registered
owner of a majority of the units. R.S.O. 1980, c. 84, s. 39.

INVESTIGATION OF RECORDS

40.—(1) Every person in receipt of money paid to or for
the benefit of the corporation shall, upon reasonable notice
and during normal business hours, make available for examina­
tion by the corporation or any owner or mortgagee, all
records relating to the receipt and disposition of such money.

(2) Upon application to a judge of a county or district
court by the corporation or any owner or mortgagee, the
judge, if satisfied that the application is made in good faith
and that it is prima facie in the best interests of the applicant
to do so, may make an order, upon such terms as to the
costs of the investigation or audit or otherwise as he considers
proper, appointing an inspector to make such investigation
of the affairs of any person in receipt of money mentioned in
subsection (1) and to make such audit of the accounts and
records of such person as the judge considers necessary.

(3) An inspector appointed under subsection (2) has the
powers of a commission under Part II of the Public Inquiries
Act, which Part applies to such investigation or audit
as if it were an inquiry under that Act.

(4) All money referred to in subsection (1) shall be held
by the person in receipt thereof in trust for the perform­
ance of the duties and obligations in respect of which the
money is paid, and he shall pay such money into a separate
account at a chartered bank or trust company or a loan
company or credit union authorized by law to receive money
on deposit or a Province of Ontario Savings Office and shall
designate the account as a trust account in the name of the cor­
poration. R.S.O. 1980, c. 84, s. 40.

REPAIRS AND MAINTENANCE

41.—(1) For the purposes of this Act, the obligation to
repair after damage and to maintain are mutually exclusive.
and the obligation to repair after damage does not include the repair of improvements made to units after registration of the declaration and description.

(2) Subject to section 42, the corporation shall repair the units and common elements after damage.

(3) The corporation shall maintain the common elements.

(4) Each owner shall maintain his unit.

(5) Notwithstanding subsections (2), (3) and (4), the declaration may provide that,

(a) each owner shall, subject to section 42, repair his unit after damage;

(b) the owners shall maintain the common elements or any part of the common elements;

(c) the corporation shall maintain the units; or

(d) each owner shall maintain and repair after damage those parts of the common elements of which he has the exclusive use.

(6) The corporation shall make any repairs that an owner is obligated to make and that he does not make within a reasonable time.

(7) An owner shall be deemed to have consented to have repairs done to his unit by the corporation under this section and the cost of such repairs shall be added to the owner's contribution toward common expenses.

(8) All warranties given with respect to workmanship and materials furnished to the property shall enure to the benefit of all unit owners from time to time and to the corporation. R.S.O. 1980, c. 84, s. 41.

WHERE DAMAGE OCCURS

42.—(1) Where damage to the building occurs, the board shall determine within thirty days of the occurrence whether there has been substantial damage to 25 per cent of the buildings.

(2) Where there has been a determination that there has been substantial damage to 25 per cent of the buildings, the corporation shall repair within a reasonable time, unless, within sixty days after the determination made under subsection (1), by a vote of owners who own 80 per cent of the units, the owners vote for termination. R.S.O. 1980, c. 84, s. 42.
TERMINATION

43.—(1) Where, under subsection 42 (2), the owners vote for termination, the corporation shall, within ten days of the vote, register a notice of termination in the prescribed form.

(2) Upon the registration of a notice of termination under subsection (1),

(a) the government of the property by this Act is terminated;

(b) the owners are tenants in common of the land and interests appurtenant to the land described in the description in the same proportions as their common interests;

(c) claims against the land and interests appurtenant to the land created before the registration of the declaration and description are as effective as if the declaration and description had not been registered;

(d) encumbrances against each unit and common interest created after the registration of the declaration and description are claims against the interest of the owner in the land and interests appurtenant to the land described in the description, and have the same priority they had before the registration of the notice of termination; and

(e) all claims against the property created after the registration of the declaration and description, other than the encumbrances mentioned in clause (d), are extinguished. R.S.O. 1980, c. 84, s. 43.

44.—(1) Sale of the property or any part of the common elements may be authorized,

(a) by a vote of owners who own 80 per cent of the units;

(b) by the consent of the persons having registered claims against the property or the part of the common elements, as the case may be, created after the registration of the declaration and description; and

(c) if the sale of part only of the common elements includes any portion of the common elements that are to be used by the owners of one or more designated units and not by all the owners, by the consent of the owners of the designated units affected.
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(2) A deed or transfer shall be executed by the authorized officers of the corporation under its seal and a release or discharge shall be given by all persons having registered claims against the property or the part of the common elements, as the case may be, created after the registration of the declaration and description.

(3) Upon the registration of the instruments mentioned in subsection (2),

(a) the government of the property or of the part of the common elements by this Act is terminated;

(b) claims against the land and interests appurtenant to the land created before the registration of the declaration and description are as effective as if the declaration and description had not been registered; and

(c) claims against the property or the part of the common elements created after the registration of the declaration and description are extinguished.

(4) Subject to subsection (5), the owners share the proceeds of the sale in the same proportions as their common interests.

(5) Where a sale is made under this section, any owner who dissented may elect to have the fair market value of the property at the time of the sale determined by arbitration under the Arbitrations Act by serving notice to that effect on the corporation within ten days after the vote, and the owner who served the notice is entitled to receive from the proceeds of the sale the amount he would have received if the sale price had been the fair market value as determined by the arbitration.

(6) Where the proceeds of the sale are inadequate to pay the amount determined under subsection (5), each of the owners who voted for the sale is liable for a portion of the deficiency determined by the proportions of their common interests.

(7) Subject to subsection (8), where any part of the common elements are expropriated under the Expropriations Act, the owners shall share the proceeds in the same proportions as their common interests.
(8) Any portion of the proceeds received on expropriation under the *Expropriations Act* that is attributable to any portion of the common elements that are to be used only by the owners of designated units and not by all the owners shall be divided among the owners of the designated units affected in the proportions in which their interests are affected. R.S.O. 1980, c. 84, s. 44.

45.—(1) Termination of the government of the property by this Act may be authorized,

(a) by a vote of owners who own 80 per cent of the units; and

(b) by the consent of the persons having registered claims against the property created after the registration of the declaration and description.

(2) Where termination of the government of the property by this Act is authorized under subsection (1), the corporation shall register a notice of termination in the prescribed form, executed by the authorized officers of the corporation under its seal and by all the persons having registered claims against the property created after the registration of the declaration and description.

(3) Upon registration of a notice of termination under subsection (2),

(a) the government of the property by this Act is terminated;

(b) the owners are tenants in common of the land and interests appurtenant to the land described in the description in the same proportions as their common interests;

(c) claims against the land and the interests appurtenant to the land described in the description created before the registration of the declaration and description are as effective as if the declaration and description had not been registered;

(d) encumbrances against each unit and common interest created after the registration of the declaration and description are claims against the interest of the owner in the land and interests appurtenant to the land described in the description and have the
same priority as they had before the registration of the notice of termination; and

(e) all other claims against the property created after the registration of the declaration and description are extinguished. R.S.O. 1980, c. 84, s. 45.

48. — (1) A corporation, any owner, or any person having an encumbrance against a unit and common interest may apply to the Supreme Court for an order terminating the government of the property by this Act.

(2) The court may order that the government of the property by this Act be terminated if the court is of the opinion that the termination would be just and equitable, and, in determining whether the termination would be just and equitable, the court shall have regard to,

(a) the scheme and intent of this Act;

(b) the probability of unfairness to one or more owners if termination is not ordered; and

(c) the probability of confusion and uncertainty in the affairs of the corporation or the owners if termination is not ordered.

(3) Where an order of termination is made under subsection (2), the court may include in the order any provisions that the court considers appropriate in the circumstances. R.S.O. 1980, c. 84, s. 46.

47. When the owners and the property cease to be governed by this Act,

(a) the assets of the corporation shall be used to pay any claims for the payment of money against the corporation;

(b) the remainder of the assets of the corporation shall be distributed among the owners in the same proportions as the proportions of their common interests. R.S.O. 1980, c. 84, s. 47.

VOTING BY MORTGAGEES

48. Where a mortgage of a unit and common interest contains a provision that authorizes the mortgagee to exercise
the right of the owner to vote or to consent, the mortgagee may exercise the right, and, where two or more such mortgages contain such a provision, the right may be exercised by the mortgagee who has priority. R.S.O. 1980, c. 84, s. 48.

PERFORMANCE OF DUTIES

49.—(1) Where a duty imposed by this Act, the declaration, the by-laws or the rules is not performed, the corporation, any owner, the bureau, or any person having a registered mortgage against a unit and common interest, may apply to the county or district court for an order directing the performance of the duty.

(2) The court may by order direct performance of the duty and may include in the order any provisions that the court considers appropriate in the circumstances.

(3) Where the owner who has leased his unit defaults in his obligation to contribute to the corporation towards the common expenses as provided under subsection 32 (1) and subsection 41 (7), the corporation may by written notice to the lessee require the lessee to pay to the corporation, and upon receipt of such notice the lessee shall pay, out of the rent due under the lease, an amount equal to the default and such payment shall constitute payment toward rent under the lease and the lessee shall not by reason only of such payment to the corporation be in default of his obligation under the lease.

(4) The lessee of a unit is subject to the duties imposed by this Act, the declaration, the by-laws and the rules on an owner, except those duties respecting common expenses, and this section applies in the same manner as to an owner and, where the lessee is in contravention of an order under this section or where he fails to pay, pursuant to a notice given under subsection (3), the court may terminate the lease.

(5) Nothing in this section restricts the remedies otherwise available for failure to perform any duty imposed by this Act.

(6) Where the owner of a unit leases his unit, the owner shall notify the corporation that the unit is leased and shall provide to the corporation the lessee’s name and the owner’s address. R.S.O. 1980, c. 84, s. 49.
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APPLICATION OF THE PLANNING ACT

50.—(1) Section 29 and clause 35 (1) (b) of the Planning Act do not apply in respect of dealings with whole units and common interests.

(2) Subject to subsection (3), the provisions of section 36 of the Planning Act that apply to plans of subdivision apply, with necessary modifications, to descriptions under this Act, and a description shall not be registered unless approved or exempted by the Minister of Housing.

(3) Before making an application under subsection 36 (1) of the Planning Act, the owner of a property or someone authorized by him in writing may apply to the Minister of Housing to have the description or any part of the description exempted from such section 36, or from any provisions thereof, and where in the opinion of the Minister such exemption is appropriate in the circumstances, he may grant the exemption.

(4) Section 38 of the Planning Act does not apply in respect of descriptions made for the purposes of this Act. R.S.O. 1980, c. 84, s. 50.

SALE AND LEASE OF UNITS

51.—(1) Every agreement of purchase and sale entered into by a proposed declarant for a proposed unit for residential purposes shall be deemed to contain,

(a) a covenant by the vendor to take all reasonable steps to register a declaration and description in respect of the property in which the unit is included without delay;

(b) a covenant by the vendor to take all reasonable steps to sell the other residential units included in the property without delay other than any units mentioned in a statement under clause 54 (1) (c);

(c) a covenant by the vendor to take all reasonable steps to deliver to the purchaser a registrable deed or transfer of the unit without delay; and

(d) a provision that the vendor will not collect from the purchaser any money on behalf of the corporation.
(2) Notwithstanding any provision to the contrary con­tained therein, an agreement of purchase and sale of a pro­posed unit for residential purposes shall not be terminated by the proposed declarant only by reason of the failure to register the declaration and description within a period of time specified in the agreement, unless the purchaser consents to the termination in writing.

(3) Notwithstanding subsection (2), the proposed declarant may apply to a judge of a county or district court and the judge may by order terminate the agreement if he is satis­fied that,

(a) the proposed declarant has taken all reasonable steps to register a declaration and description;

(b) a declaration and description cannot be registered within a reasonable period of time; and

(c) the failure and inability to register a declaration and description is caused by circumstances beyond the control of the proposed declarant.

(4) The judge may, in an order under subsection (3), provide that a declaration and description shall not be registered in respect of the property in which the proposed unit is included during such period as he specifies in the order.

(5) An order under subsection (3) is ineffective until a certified copy thereof is registered.

(6) Where an agreement of purchase and sale entered into by a proposed declarant for a proposed unit for residential purposes permits or requires the purchaser to take possession of or occupy the unit before a deed or transfer of the unit acceptable for registration is delivered to him, the money paid in respect of such right or obligation to the proposed declarant shall be not greater, on a monthly basis, than the total of the following amounts:

1. The amount of interest that the purchaser would have paid, monthly, in respect of any mortgage or mortgages he is obligated to assume or give under the agreement of purchase and sale on delivery of a deed or transfer of the unit.

2. An amount reasonably estimated on a monthly basis for municipal taxes attributable to the proposed unit.

3. The projected monthly common expense contribution for that unit.
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(7) Where a purchaser takes possession of a proposed unit for residential purposes under an agreement that permits the purchaser to take possession of or occupy the unit before a deed or transfer of the unit acceptable for registration is delivered to him, notwithstanding the provisions of the Landlord and Tenant Act, the proposed declarant,

(a) shall provide those services and only those services that the proposed corporation will have a duty to provide to owners;

(b) shall repair and maintain the property and the proposed unit in the same manner as the proposed corporation will have a duty to repair and maintain;

(c) has the same right of entry that the proposed corporation will have; and

(d) may withhold consent to an assignment of the occupancy agreement. R.S.O. 1980, c. 84, s. 51.

52. — (1) An agreement of purchase and sale entered into after the 1st day of June, 1979 by a declarant or proposed declarant of a unit or proposed unit for residential purposes is not binding on the purchaser until the declarant or proposed declarant has delivered to the purchaser a copy of the current disclosure statement and all material amendments thereto.

(2) The purchaser, before receiving delivery of a deed to or transfer of the unit, may rescind the agreement of purchase and sale within ten days after receiving the disclosure statement or, where there has been a material amendment thereto, within ten days after receiving the material amendment.

(3) A person may rescind an agreement of purchase and sale under subsection (2) by giving written notice of the rescission to the declarant or proposed declarant or to the solicitor of the declarant or proposed declarant.

(4) Every declarant or proposed declarant who receives notice of rescission under subsection (3) from a person entitled to rescind the agreement of purchase and sale under subsection (2), shall forthwith refund, without penalty or charge, to the person giving notice, all money that he received from that person under the agreement that was credited as payment against purchase price.

(5) Where any statement or material required under this Act to be provided by a declarant or proposed declarant to a
purchaser of a unit or proposed unit for residential purposes contains any material statement or information that is false, deceptive or misleading or fails to contain any material statement or information, the corporation or any unit owner who relied on such statement or material is entitled, as against the declarant or the proposed declarant to damages for any loss sustained as a result of such reliance.

(6) The disclosure statement referred to in subsection (1) shall contain and fully and accurately disclose,

(a) the name and municipal address of the declarant or proposed declarant and of the property or proposed property;

(b) a general description of the property or proposed property including the types and number of buildings, units and recreational and other amenities together with any conditions that apply to the provision of amenities;

(c) the portion of units or proposed units which the declarant or proposed declarant intends to market in blocks of units to investors;

(d) a brief narrative description of the significant features of the existing or proposed declaration, by-laws and rules governing the use of common elements and units, and of any contracts or leases that may be subject to termination or expiration under section 39;

(e) a budget statement for the one year period immediately following the registration of the declaration and the description;

(f) where construction of amenities is not completed, a schedule of the proposed commencement and completion dates; and

(g) any other matters required by the regulations to be disclosed.

(7) The budget statement mentioned in clause (6) (e) shall set out,

(a) the common expenses;

(b) the proposed amount of each expense;

(c) particulars of the type, frequency and level of the services to be provided;
(d) the projected monthly common expense contribution for each type of unit;

(e) a statement of the portion of the common expense to be paid into a reserve fund;

(f) a statement of the assumed inflation factor;

(g) a statement of any judgments against the corporation, the status of any pending lawsuits to which the corporation is a party and the status of any pending lawsuits material to the property of which the declarant or proposed declarant has actual knowledge;

(h) any current or expected fees or charges to be paid by unit owners or any of them for the use of the common elements or part thereof and other facilities related to the property;

(i) any services not included in the budget that the declarant or proposed declarant provides, or expenses that he pays and that might reasonably be expected to become, at any subsequent time, a common expense and the projected common expense contribution attributable to each of those services or expenses for each type of unit;

(j) the amounts in all reserve funds; and

(k) any other matters required by the regulations to be disclosed.

(8) Where the total amount incurred for the common expenses provided for in the budget statement exceeds the total of the proposed amounts set out in the statement, for the period covered by the budget statement mentioned in clause (6) (e) the declarant shall forthwith pay to the corporation the amount of the excess except in respect of increased expenses attributable to the termination of an agreement under section 39.

(9) Where the declarant shows any expected fees, charges, rents or other revenue to be paid to the corporation for the use of the common elements or assets or any part thereof or any other facilities related to the property and,

(a) where the total amount received is less than the expected fees, charges, rents or other revenue, the declarant shall forthwith pay to the corporation the
amount of the deficiency less the amount, if any, that
the total of the proposed amounts for common ex­
penses set out in the budget statement mentioned
in clause (6) (e) exceeds the total amount incurred for
common expenses for the period covered by the budget
statement; or

(b) where the total amount received is more than the
expected fees, charges, rents or other revenue, the
declarant may set off the amount of the excess
against any amount he may be required to pay
under subsection (8). R.S.O. 1980, c. 84, s. 52.

53.—(1) All money received by or on behalf of a pro­
posed declarant from a purchaser on account of a sale or an
agreement for the purchase and sale of a proposed unit for
residential purposes before the registration of the declaration
and description, other than money paid as rent or as an
occupancy charge, shall, notwithstanding the registration of
the declaration and description thereafter, be held in trust
by the person receiving such money for the person entitled
thereto in respect of the agreement and such money shall be
held in a separate account designated as a trust account at
a chartered bank or trust company or a loan company or
credit union authorized by law to receive money on deposit
or a Province of Ontario Savings Office until,

(a) its disposition to the person entitled thereto; or

(b) delivery of prescribed security to the purchaser for
repayment.

(2) Where an agreement of purchase and sale referred to
in subsection (1) is terminated and the purchaser is entitled
to the return of any money paid under the agreement, the
proposed declarant shall pay to the purchaser interest on
such money at the prescribed rate.

(3) Subject to subsection (2), where a purchaser of a pro­
posed unit under an agreement of purchase and sale referred
to in subsection (1) enters into possession or occupation of the
unit before a deed or transfer of the unit acceptable for
registration is delivered to him, the proposed declarant shall
pay interest at the prescribed rate on all money received
by him on account of the purchase price from the day the
purchaser enters into possession or occupation until the day
a deed or transfer acceptable for registration is delivered to
him.
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Subject to subsections (2) and (3), the proposed declarant is entitled to any interest earned on the money required to be held in trust under subsection (1). R.S.O. 1980, c. 84, s. 53.

54.—(1) A declarant or proposed declarant shall not grant a lease of a unit or proposed unit for residential purposes unless,

(a) the lessee has entered into a bona fide agreement to purchase the unit;

(b) the lease grants to the lessee a bona fide option to purchase the unit;

(c) every agreement of purchase and sale of a unit included in the property includes a statement that the unit to be included in the lease is or will be leased and specifies the uses that are or will be permitted by the lease; or

(d) written notice of the lessor's intention to lease the unit has been given to every purchaser under an agreement of purchase and sale, registered owner and mortgagee entitled to vote, and the period referred to in subsection (2) has expired or, where an application is made under subsection (2), it is finally disposed of.

(2) Any person notified under clause (1) (d) may, within twenty-one days after receiving the notice, and on written notice to the declarant, apply to a judge of a county or district court, and the judge, if he is of the opinion that the declarant has not taken all reasonable steps to sell the unit, may by order prohibit the declarant from leasing the unit or grant other relief as he considers proper.

(3) The notice mentioned in clause (1) (d) shall specify the unit or units intended to be leased and the uses that will be permitted by the lease but need not set out any other terms or identify any proposed lessee.

(4) A declarant or proposed declarant may grant leases of a unit or proposed unit for residential purposes for a period in each case not exceeding two years, including renewals, provided that subsection (1) is complied with in respect of each lease.

(5) This section does not apply to the renewal of a lease of a unit or proposed unit where the lease was entered into before any agreement of purchase and sale of any unit or proposed unit included in the property is entered into.
(6) In this section, “lease” includes a licence to use or occupy and any agreement in the nature of a lease. R.S.O. 1980, c. 84, s. 54.

54. Every person who knowingly contravenes subsection 26(3), section 30, subsection 40(1) or (4), subsection 52 (5), (6) or (7), subsection 53 (1), subsection 56 (8) or subsection 60 (1), or knowingly purports to enter into a lease in contravention of subsection 54 (1) or (4) is guilty of an offence and on conviction is liable to a fine of,

(a) not more than $25,000, where the person is a corporation; or

(b) not more than $2,000, where the person is other than a corporation R.S.O. 1980, c. 84, s. 55.

BUREAU

56.-(1) The Lieutenant Governor in Council shall designate a non-profit corporation incorporated without share capital under the Corporations Act to be the bureau for the purposes of this Act.

(2) No corporation shall be designated under subsection (1), whose by-laws do not provide for representation of owners of condominium units on the board of directors.

(3) Upon its designation, the objects of the corporation are extended to include,

(a) advising and assisting the public in condominium matters;

(b) assisting in the resolution of disputes between condominium corporations and unit owners and between two or more unit owners and for this purpose appointing review officers and paying their remuneration;

(c) disseminating information for the purpose of educating and advising condominium corporations and unit owners concerning condominium matters and the financial, operating and management practices of condominium corporations; and

(d) assisting in the formulation and conduct of educational courses for property management.
(4) The bureau shall appoint review officers who shall perform the duties and exercise the powers given to them by this Act and the regulations under the supervision of the bureau and shall perform such other duties as are assigned to them by the bureau.

(5) All moneys payable under this Act to the bureau shall be retained by the bureau and applied to defray the expenses incurred and expenditures made in the carrying out of its duties under this Act and otherwise for the purposes of its objects set out in subsection (3).

(6) The bureau shall make a report annually to the Minister of Consumer and Commercial Relations upon the affairs of the bureau, and the Minister shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session.

(7) Each corporation shall pay to the bureau an annual fee in the amount prescribed by regulation for each unit comprising the property and shall file such information and material as is prescribed by the regulations.

(8) Every declarant shall file with the bureau the material set out in clauses 26 (3) (f), (g), (h) and (i) prior to the meeting required under subsection 26 (1).

(9) The bureau is not a Crown agency within the meaning of the Crown Agency Act.

(10) The bureau may exempt corporations from the provisions of subsections 36 (2) and (3) as set out in subsection 36 (7). R.S.O. 1980, c. 84, s. 56.

57.—(1) Where there is a dispute between a corporation and an owner or between two or more owners in respect of any matter relating to this Act, the declaration, by-laws or rules, any party to the dispute may, prior to the commencement of any court proceeding in respect of the same matter, refer the matter in dispute to the bureau for resolution and shall notify all other parties affected.

(2) Within fourteen clear days after the matter has been referred to the bureau, the bureau shall give written notice to all parties of the date, time and place for the consideration
of the matter in dispute and shall designate a person as review officer to review the matter in dispute.

(3) For purposes of a review under subsection (2), the review officer may inquire into any matter relevant to the subject-matter of the dispute, whether or not previously brought to his attention by the parties.

(4) Upon completing the review and subject to subsection (5), the review officer may make an order ordering any party to the review to do or refrain from doing any act that is the subject-matter of the review.

(5) Where the review officer proposes to make an order under subsection (4), he shall serve notice of his proposal together with written reasons therefor on all parties to the review.

(6) A notice under subsection (5) shall state that every party to the review is entitled to appeal the proposed order to The Commercial Registration Appeal Tribunal and shall specify the place where the appeal may be filed.

(7) Where there is no appeal to The Commercial Registration Appeal Tribunal, the review officer may make his order upon the expiration of twenty-one days after the last service of notice under subsection (5) on a party to the review.

(8) On the request of any party to the review proceedings, the review officer shall file a copy of any order made by him under subsection (4) in the office of the Registrar of the Supreme Court under section 19 of the Statutory Powers Procedure Act, which applies thereto.

(9) Except as provided in subsection (8), the Statutory Powers Procedure Act does not apply to proceedings before the review officer designated by the bureau.

(10) Every party to a review proceedings may appeal a review officer's proposal by filing a notice of appeal with The Commercial Registration Appeal Tribunal within twenty-one days after being served with notice of the review officer's proposal.

(11) On an appeal, The Commercial Registration Appeal Tribunal may proceed by way of a hearing de novo and after the hearing, the Tribunal may make any order it considers just and equitable and for such purposes the Tribunal shall substitute its opinion for that of the review officer.

R.S.O. 1980, c. 84, s. 57.
Sections 56 and 57 do not come into force until a day to be named by proclamation of the Lieutenant Governor. R.S.O. 1980, c. 84, s. 58.

REGULATIONS

59.—(1) The Lieutenant Governor in Council may make regulations,

(a) classifying properties for the purposes of the regulations;

(b) prescribing the duties of officers appointed under the Land Titles Act or the Registry Act for the purpose of this Act;

(c) governing the method of describing in instruments of a property or any part of a property;

(d) governing surveys, structural plans, descriptions and diagrams, and prescribing procedures for their registration and amendment;

(e) requiring, in respect of any class of properties, in lieu of or in addition to the requirements of section 4, surveys of the properties showing the units and common elements;

(f) respecting the registration and recording of declarations, descriptions, by-laws, notices of termination and other instruments;

(g) respecting the names of corporations;

(h) respecting additions to the common elements;

(i) requiring the payment of fees to officers appointed under the Land Titles Act or the Registry Act, and prescribing the amounts thereof;

(j) prescribing forms and providing for their use;

(k) governing funds intended for the payment of common expenses;

(l) requiring and governing the books, accounts and records that shall be kept by condominium corporations and requiring and governing the account-
(m) prescribing security for the purposes of clause 53 (1) (b);

(n) prescribing rates of interest that shall be paid on moneys required to be held in trust under this Act;

(o) designating liens or claims for the purposes of clause 33 (2) (d);

(p) prescribing statements and information required for the purposes of subsection 32 (8);

(q) regulating and governing the duties and powers of review officers appointed under subsection 56 (4);

(r) prescribing the amounts of fees that are payable or chargeable under this Act;

(s) prescribing information to be filed by corporations with the bureau;

(t) prescribing any matter that by this Act is required or permitted to be or referred to as prescribed by the regulations.

(2) Any provision of any regulation may be made to apply to all properties or to any class of properties. R.S.O. 1980, c. 84, s. 59.

80. Repealed: 1983, c. 67, s. 7.

81. This Act applies notwithstanding any agreement to the contrary. R.S.O. 1980, c. 84, s. 61.
CHAPTER 67

An Act to regulate Conveyances of Dwelling Units in Residential Complexes

Assented to December 2nd, 1983

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

(a) "advertise for sale" includes making oral representations;

(b) "interest" includes a security;

(c) "prescribed" means prescribed by regulations;

(d) "regulations" means regulations made under this Act;

(e) "residential complex" means a building or related group of buildings situated in Ontario in which more than six dwelling units are located and a mobile home park as defined in Part IV of the Landlord and Tenant Act;

(f) "security" means a security within the meaning of the Securities Act.

2.—(1) No person shall sell or offer to sell, an interest in respect of a residential complex to a purchaser who is led to believe,

(a) that, along with the interest, he is acquiring the present or future right to occupy a dwelling unit in the residential complex; or

(b) that he is acquiring exclusive ownership of a dwelling unit in the residential complex if that is not the case.
(2) No person shall advertise, by any means, an interest for sale that would, if the sale were completed, be in contravention of subsection (1).

(3) No person shall knowingly act in a transaction that would, be in contravention of subsection (1) or (2) as an agent for the person who sells the interest, makes the offer or instigates the advertisement.

(4) For the purpose of subsection (1), a person shall be deemed to be led to believe that he is acquiring the right to occupy a dwelling unit where he is led, expressly or by implication, by written or oral statements, to understand that he may occupy or acquire the right to occupy a dwelling unit.

(5) A person is not in contravention of subsection (1) simply because he sets out a clear, accurate, written statement of law in respect of the right to occupy the unit.

3. This Act does not apply to a sale, offer to sell or advertisement for sale of,

(a) an interest in a residential complex to a purchaser who acquires or will acquire the right to occupy a dwelling unit that,

(i) the vendor occupies, or

(ii) is exempted by the regulations;

(b) a unit or proposed unit as defined in the Condominium Act; or

(c) a security issued by a corporation to which the Cooperative Corporations Act applies.

4. Every offer to purchase or agreement of purchase that is in contravention of subsection 2 (1) is voidable, up to the time the transaction is complete, at the option of the purchaser and the purchaser, whether he exercises his option or not, may claim damages from the vendor or any person who acted in the transaction as agent for the vendor in contravention of section 2.

5.—(1) Every person who contravenes any provision of this Act is guilty of an offence and on conviction is liable to a fine of not less than $1,000 and not more than $50,000 or to imprisonment for a term of not more than one year or, to both, or, if such person is a corporation, to a fine of not more than $100,000.
(2) Where a corporation is guilty of an offence under this Act, every director or officer of the corporation who authorized, permitted or acquiesced in the offence is also guilty of an offence and on conviction is liable to a fine of not less than $1,000 and not more than $50,000 or to imprisonment for a term of not more than one year, or to both.

6.—(1) The Lieutenant Governor in Council may make regulations,

(a) prescribing classes of dwelling units;

(b) exempting any dwelling unit or class of dwelling units from any provision of this Act; and

(c) prescribing conditions attaching to any exemption.

(2) Any exemption made under subsection (1) may be limited as to time or place, or both, and may exclude any place from the application of the exemption and may be subject to prescribed conditions.

(3) Any class prescribed under subsection (1) may be defined with respect to any attribute, quality or characteristic or combination thereof.

7. Section 60 of the Condominium Act is repealed.

8. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

9. The short title of this Act is the Residential Complex Sales Representation Act, 1983.
CHAPTER 6

Condominium Act

Assented to May 13th, 1977)

BE IT ENACTED by the Lieutenant Governor and Legislative Assembly of the Province of Prince Edward Island as follows:

1. (1) In this Act

(a) "board" means the board of directors of a corporation;

(b) "buildings" means the buildings included in a property;

(c) "bylaw" means a bylaw of a corporation;

(d) "claim" includes a right, title, interest, encumbrance or demand of any kind affecting land, but does not include the interest of an owner in his unit and common interest;

(e) "common elements" means all the property except the units;

(f) "common expenses" means the expenses of the performance of the objects and duties of a corporation and any expenses specified as common expenses in a declaration;

(g) "common interest" means the interest in the common elements appurtenant to a unit;

(h) "corporation" means a corporation incorporated by this Act;

(i) "declarant" means the owner in fee simple of the land described in the description at the time of the registration of a declaration and description of the land, and includes any successor or assignee of such owner but does not include a bona fide purchaser of a unit who actually pays fair market value or any successor or assignee of such purchaser;

(j) "declaration" means the declaration specified in section 3, and includes any amendments;
(k) "description" means the description specified in section 4;

(l) "encumbrance" means a claim that secures the payment of money or the performance of any other obligation, and includes a charge, a mortgage and a lien;

(m) "owner" means the owner of a freehold estate in a unit and common interest, but does not include a mortgagee unless in possession;

(n) "prescribed" means prescribed by the regulations;

(o) "property" means the land and interest appurtenant to the land described in the description, and includes any land and interests appurtenant to land that are added to the common elements;

(p) "proposed unit" means land described in an agreement of purchase and sale that provides for delivery to the purchaser of a deed or transfer capable of registration after a declaration and description have been registered in respect of the land;

(q) "registered" means registered under the Registry Act, R.S.P.E.I. 1974, Cap. R-11;

(r) "regulations" means the regulations made under this Act;

(s) "unit" means a part or parts of the land included in the description and designated as a unit by the description, and comprises the space enclosed by its boundaries and all the material parts of the land within this space at the time the declaration and description are registered.

Ownership of land

(2) For the purposes of this Act, the ownership of land includes the ownership of space.

DECLARATION AND DESCRIPTION

Freehold land only

Who may register

2. (1) A property shall comprise only freehold land and interests, if any, appurtenant to that land.

(2) A declaration and description may be submitted for registration by or on behalf of the owner in fee simple of the land described in the description and, if in proper form and accompanied by a certificate of approval issued under subsection 4 (2), may be accepted for registration.
(3) Upon registration of a declaration and description, the land and the interests appurtenant to the land described in the description are governed by this Act.

3. (1) A declaration shall not be registered unless it is executed by the owner of the land and interest appurtenant to the land described in the description and unless it contains

(a) a statement of intention that the land and interests appurtenant to the land described in the description be governed by this Act;

(b) the consent, in the prescribed form, of all persons having registered encumbrances against the land or interests appurtenant to the land described in the description;

(c) a statement, expressed in percentages, of the proportions of the common interests;

(d) a statement, expressed in percentages allocated to the units, of the proportions in which the owners are to contribute to the common expenses;

(e) an address for service;

(f) a specification of common expenses;

(g) a specification of any parts of the common elements that are to be used by the owners of one or more designated units and not by all the owners;

(h) provisions respecting the occupation and use of the units and common elements;

(i) provisions restricting gifts, leases and sales of the units and common interests;

(j) provisions regulating the assessment and collection of contributions towards the common expenses;

(k) a specification of the majority required to make substantial changes in the common elements and the assets of the corporation;

(l) a specification of any provision requiring the corporation to purchase the units and common interests of any dissenters after a substantial addition, alteration or improvement to or renovation of the common elements has been made or after the assets of the corporation have been substantially changed; and

(m) a specification of any allocation of the obligations to repair and to maintain the units and common elements.
In addition to the matters mentioned in subsection (1), a declaration may contain:

(a) a specification of the number, qualification, nomination, election, term of office, compensation and removal of members of the board, and the meetings, quorum, functions and officers of the board;

(b) a specification of duties of the corporation consistent with its objects;

(c) a specification of the majority required to make bylaws of the corporation;

(d) a specification of the percentage of substantial damage to the buildings and a specification of the majority required to authorize repairs under section 22;

(e) a specification of the majority required for a sale of the property or of part of the common elements;

(f) a specification of the majority required for the termination of government of the property by this Act; and

(g) any other matters concerning the property.

The declaration may be amended only with the consent of all owners and all persons having registered encumbrances against the units and common interests.

When a declaration is amended, the corporation shall register a copy of the amendment executed by all the owners and all persons having registered encumbrances against the units and common interests, and until the copy is registered the amendment is ineffective.

Notwithstanding subsections (3) and (4), the corporation may by resolution of the board change its address for service and the change does not take effect until a notice thereof in the prescribed form is registered.

The corporation on at least seven days notice to every owner, or an owner on at least seven days notice to the corporation and every other owner, may apply to a judge of the Supreme Court for an order amending the declaration or description and the judge, if he is satisfied that an amendment is necessary or desirable to correct a manifest error or inconsistency in the declaration or description or arising out of the carrying out of the intent and purpose of the declaration or description, may make the order.

An amendment to a declaration or description made by an
order under subsection (6) is ineffective until a certified copy of the order is registered.

4. (1) A description shall contain
   (a) a plan of survey showing the perimeter of the horizontal surface of the land and the perimeter of the buildings;
   (b) structural plans of the buildings;
   (c) a specification of the boundaries of each unit by reference to the buildings;
   (d) diagrams showing the shape and dimensions of each unit and the approximate location of each unit in relation to the other units and the buildings;
   (e) a certificate of a competent professional authority that the buildings have been constructed and that the diagrams of the units are substantially accurate and substantially in accordance with the structural plans; and
   (f) a description of any interests appurtenant to the land that are included in the property,

prepared in accordance with the regulations.

(2) A description shall not be registered unless a certificate of approval has been issued by the Deputy Provincial Secretary in accordance with the regulations.

REGISTRATION

5. (1) Every registrar of deeds in whose office a declaration and description are registered shall keep an index in the prescribed form to be known as the "Condominium Corporations Index".

(2) Every registrar of deeds in whose office a declaration and description are registered shall keep a register in the prescribed form to be known as the "Condominium Register".

(3) Declarations, descriptions, bylaws, notices of termination, and other instruments respecting land governed by this Act shall be registered and recorded in the Condominium Register in accordance with this Act and the regulations but, except as otherwise provided by this Act and the regulations, the Registry Act, R.S.P.E.I. 1974, Cap. R-11 applies in respect of property governed by this Act.
6. (1) Units and common interests are real property for all purposes.

(2) Subject to this Act, the declaration and the bylaws, each owner is entitled to exclusive ownership and use of his unit.

(3) No condition shall be permitted to exist and no activity shall be carried on in any unit or the common elements that are likely to damage the property.

(4) The corporation or any person authorized by the corporation may enter any unit to perform the objects and duties of the corporation but except

(a) in cases of emergency;

(b) with the consent of the owner given at the time of entry; or

(c) where the owner abandons the unit,

the corporation shall not exercise the right of entry unless it has first given written notice to the owner at least twenty-four hours before the time of entry, which shall be between the hours of eight o’clock in the forenoon and nine o’clock in the afternoon and specified in the notice.

7. (1) The owners are tenants in common of the common elements.

(2) An undivided interest in the common elements is appurtenant to each unit.

(3) The proportions of the common interests are those expressed in the declaration.

(4) Subject to this Act, the declaration and the bylaws, each owner may make reasonable use of the common elements.

(5) The ownership of a unit shall not be separated from the ownership of the common interest, and any instrument that purports to separate the ownership of a unit from a common interest is void.

(6) Except as provided by this Act, the common elements shall not be partitioned or divided.

(7) No encumbrance is enforceable against the common elements after the declaration and description are registered.

(8) Where, but for subsection (7), an encumbrance would be enforceable against the common elements, the encumbrance is enforceable against all the units and common interests.
(9) Any unit and common interest may be discharged from such an encumbrance by payments to the claimant of a portion of the sum claimed determined by the proportions specified in the declaration for sharing the common expenses.

(10) Upon payment of a portion of the encumbrance sufficient to discharge a unit and common interest, and upon demand, the claimant shall give to the owner a discharge of that unit and common interest in accordance with the regulations.

(11) For the purpose of determining liability resulting from breach of the duties of an occupier of land, the corporation shall be deemed to be the occupier of the common elements and the owners shall be deemed not to be occupiers of the common elements.

EASEMENTS

8. (1) The following easements are appurtenant to each unit:

1. Where a building or any part of a building
   (a) moves after registration of the declaration and description; or
   (b) after having been damaged and repaired, is not restored to the position occupied at the time of registration of the declaration and description,

   an easement for exclusive use and occupation in accordance with this Act, the declaration and the bylaws, over the space of the other units and common elements that would be space included in the unit if the boundaries of the unit were determined by the position of the buildings from time to time after registration of the description and not at the time of registration.

2. An easement for the provision of any service through any installation in the common elements or any other unit.

3. An easement for support by the common elements and any other unit capable of providing support.

(2) The following easements are appurtenant to the common elements:

1. An easement for the provision of any service through any installation in any unit.

2. An easement for support by any unit capable of providing support.
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9. (1) The corporation may, by bylaw:
   (a) lease any part of the common elements, except any part that the declaration specifies are to be used by the owners of one or more designated units and not by all the owners; and
   (b) grant or transfer an easement or license through the common elements.

   (2) A lease or a grant or transfer of an easement or license mentioned in subsection (1), signed by the authorized officers of the corporation under its seal, affects the interest of every owner in the common elements as if the lease, grant or transfer had been executed by him, and shall have attached thereto an affidavit of one of the officers stating that the lease, grant or transfer was authorized by a bylaw of the corporation.

CORPORATION

10. (1) The registration of a declaration and description creates a corporation without share capital whose members are the owners from time to time.

   (2) When a declaration and description are registered, the registrar of deeds in whose office they are registered shall assign a name to the corporation in accordance with the regulations.

   (3) The objects of the corporation are to manage the property and any assets of the corporation.

   (4) The affairs of the corporation shall be managed by a board of directors, consisting of three persons or such greater number as the declaration or bylaws may provide, elected by the members of the corporation.

   (5) The term of the members of the board shall be three years or such lesser period as the declaration or bylaws may provide, but the members of the board may continue to act until their successors are elected, and members are eligible for re-election.

   (6) If a vacancy in the membership of the board occurs, the majority of the remaining members of the board may appoint any person qualified to be a member of the board under the declaration or bylaws to fill the vacancy for the remainder of the term.

   (7) Any director may be removed before the expiration of his term by a vote of members who together own a majority of
the units and the members may elect any person qualified to be a member of the board under the declaration or bylaws for the remainder of the term of the director removed.

(8) A quorum for the transaction of business is a majority of the members of the board or such greater number as the declaration or bylaws may provide.

(9) The acts of a member of the board or an officer of the board are valid notwithstanding any defect that may afterwards be discovered in his election or qualifications.

(10) The declaration or the bylaws may specify and regulate the qualification, nomination, election, compensation and removal of members of the board, and the meetings, functions and officers of the board.

(11) The corporation shall keep adequate records, and any member of the corporation may inspect the records on reasonable notice and at any reasonable time.

(12) The corporation has a duty to effect compliance by the owners with this Act, the declaration and the bylaws.

(13) The declaration or the bylaws may specify duties of the corporation consistent with its objects.

(14) Each member of the corporation, and each person having an encumbrance against a unit and common interest has the right to the performance of any duty of the corporation specified by this Act, the declaration and the bylaws.

(15) The corporation may own, acquire, encumber and dispose of real and personal property for the use and enjoyment of the property.

(16) The members of the corporation share the assets of the corporation in the same proportions as the proportions of their common interests in accordance with this Act, the declaration and the bylaws.

(17) A judgment for the payment of money against the corporation is also a judgment against each owner at the time the cause of action arose for a portion of the judgment determined by the proportions specified in the declaration for sharing the common expenses.

(18) Any action with respect to the common elements may be brought by the corporation and a judgment for the payment of money in favour of the corporation in such an action is an asset of the corporation.

(19) When the owners and the property cease to be governed by this Act
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(a) the assets of the corporation shall be used to pay any claims for the payment of money against the corporation;

(b) the remainder of the assets of the corporation shall be distributed among the members of the corporation in the same proportions as the proportions of their common interests.

11. (1) A corporation shall hold an annual meeting of the members not more than three months after the registration of the declaration and description, and subsequently not more than fifteen months after the holding of the last preceding annual meeting, and at such meeting any member of the corporation or any mortgagee or chargee entitled to vote shall have an opportunity to raise any matter relevant to the affairs and business of the corporation.

(2) The board may at any time call a meeting of the members of the corporation for the transaction of any business, the nature of which shall be specified in the notice calling the meeting.

(3) The board shall, upon receipt of a requisition in writing made by members of the corporation who together own at least twenty-five per cent of the common elements, call and hold a meeting of the members of the corporation and if the meeting is not called and held within thirty days of receipt of the requisition, any of the requisitionists may call the meeting, and in such case, the meeting shall be held within sixty days of receipt of the requisition.

(4) The requisition shall state the nature of the business to be presented at the meeting, and shall be signed by the requisitionists and deposited at the address for service of the corporation.

(5) At least ten days written notice of every meeting of the members of the corporation specifying the place, the date and the hour thereof and the nature of the business to be presented shall be given to each member and to each mortgagee or chargee entitled to vote, personally or by prepaid mail addressed to him at the address provided under subsection (6).

(6) The corporation shall maintain a record upon which shall be entered each owner or mortgagee or chargee who notifies the corporation of his entitlement to vote and of his address for service and the notice of a meeting required by subsection (5) shall be deemed to be sufficiently given if given in accordance with subsection (5) to those persons entered on the record twelve days before the date of the meeting.

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(7) A mortgagee or chargee who receives a notice shall in order to be entitled to exercise the right of the owner to vote or to consent, notify the corporation and the owner of his intention to exercise such right at least two days before the date specified in the notice for the meeting.

12. (1) The board elected at a time when the declarant owns a majority of the units shall, not more than twenty-one days after the declarant ceases to be the registered owner of a majority of the units, call a meeting of the members of the corporation to elect a new board of directors, and such meeting shall be held within twenty-one days after the calling of the meeting.

(2) If the meeting referred to in subsection (1) is not called within the time provided for by that subsection any member of the corporation or any mortgagee or chargee entitled to vote may call the meeting.

BYLAWS

13. (1) The corporation may, by a vote of members who own sixty-six and two-thirds per cent. or such greater percentage as is specified in the declaration, of the common elements, make bylaws:

(a) governing the management of the property;

(b) governing the use of units or any of them for the purpose of preventing unreasonable interference with the use and enjoyment of the common elements and other units;

(c) governing the use of the common elements;

(d) regulating the maintenance of the units and common elements;

(e) governing the use and management of the assets of the corporation;

(f) respecting the board;

(g) specifying duties of the corporation;

(h) regulating the assessment and collection of contributions towards the common expenses;

(i) authorizing the borrowing of money to carry out the objects and duties of the corporation;

(j) respecting the conduct generally of the affairs of the corporation.
(2) The bylaws shall be reasonable and consistent with this Act and the declaration.

(3) When a bylaw is made by the corporation, the corporation shall register a copy of the bylaw together with a certificate executed by the corporation that the bylaw was made in accordance with this Act, the declaration and the bylaws, and until the copy and certificate are registered the bylaw is ineffective.

RULES GOVERNING USE OF COMMON ELEMENTS

House rules

14. (1) The bylaws may provide for the making of rules by members of the corporation who together own a majority of the units respecting the use of the common elements for the purpose of preventing unreasonable interference with the use and enjoyment of the units and common elements.

(2) The rules shall be reasonable and consistent with this Act, the declaration and the bylaws.

(3) The rules shall be complied with and enforced in the same manner as the bylaws.

OBLIGATIONS OF OWNERS

15. (1) Each owner is bound by and shall comply with this Act, the declaration and the bylaws.

(2) Each owner has a right to the compliance by the other owners with this Act, the declaration and the bylaws.

(3) The corporation, and any person having an encumbrance against any unit and common interest, has a right to the compliance by the owners with this Act, the declaration and the bylaws.

16. (1) The owners shall contribute towards the common expenses in the proportions specified in the declaration.

(2) The assessment and collection of contributions towards the common expenses may be regulated by the declaration or the bylaws.

(3) The obligation of an owner to contribute toward the common expenses shall not be avoided by waiver of the right to use the common elements or by abandonment.

(4) Where an owner defaults in his obligation to contribute to the corporation toward the common expenses in the proportion allocated to his unit, the corporation has a lien for the...
unpaid amount against that unit and its appurtenant common interest.

(5) The lien mentioned in subsection (4) expires three months after the default that gave rise to the lien first occurred unless the corporation within that time registers a notice of lien in the prescribed form.

(6) Any person acquiring an interest in a unit from an owner may, with the consent of the owner, request the corporation to give a certificate in the prescribed form in respect of the common expenses of the owner and of default in payment thereof, if any, by the owner, and the certificate binds the corporation as against the person requesting the certificate in respect of any default or otherwise shown in the certificate, as of the day it is given.

(7) The corporation shall give the certificate requested under subsection (6) within seven days after its receipt of the request therefor and where the corporation fails to give the certificate within the time prescribed, the corporation shall be deemed, as against the person requesting the certificate, to have given a certificate stating no default.

(8) The lien mentioned in subsection (4) may be enforced in the same manner as a mortgage.

(9) Upon payment of the unpaid amount and upon demand, the corporation shall give the owner a discharge in the prescribed form.

MODIFICATIONS OF COMMON ELEMENTS AND ASSETS

17. (1) The corporation may by a vote of members who own eighty per cent, or such greater percentage as is specified in the declaration, of the common elements make any substantial addition, alteration or improvement to or renovation of the common elements or may make any substantial change in the assets of the corporation, and the corporation may by a vote of a majority of the members make any other addition, alteration or improvement to or renovation of the common elements or may make any other change in the assets of the corporation.

(2) A grant or transfer of an easement to the corporation is as effective as if the corporation owns land capable of being benefited by the easement.

(3) The cost of any addition, alteration or improvement to or renovation of the common elements and the cost of any substantial change in the assets of the corporation are common expenses.
Dissenters

(4) The declaration may provide that, if any substantial addition, alteration or improvement to, or renovation of the common elements is made, or if any substantial change in the assets of the corporation is made, the corporation must, on demand of any owner who dissented, purchase his unit and common interest.

Arbitration

(5) Where the corporation and the owner who dissented do not agree as to the purchase price, the owner who dissented may elect to have the fair market value of his unit and common interest determined by arbitration under the Arbitration Act, R.S.P.E.I. 1974, Cap. A-14 by serving a notice to that effect on the corporation.

INSURANCE

18. (1) The corporation shall obtain and maintain insurance on the units and the common elements, excluding improvements and betterments made or acquired by the owner, against fire to the replacement value thereof, and against such other perils as may be specified by the declaration or bylaws to the amount required by the declaration or the bylaws, and for this purpose the corporation shall be deemed to have an insurable interest in the units and the common elements.

Payment to corporation

(2) Any payment by an insurer under a policy of insurance entered into under subsection (1) shall, notwithstanding the terms of the policy, be paid to the order of the insurance trustees designated by the declaration or bylaws of the corporation, if any, or otherwise shall be paid to or to the order of the corporation, and, subject to sections 22 and 23, the corporation shall forthwith use the proceeds for the repair or replacement of the damaged units and common elements so far as the same may be effected lawfully.

Insurance by owners

(3) Insurance obtained and maintained by a corporation under subsection (1) shall be deemed not to be other insurance for the purpose of any prohibition of or condition against other insurance in a policy of an owner insuring against loss of or damage to his unit or his interest in the common elements by fire or other peril and covering only to the extent that the insurance placed by the corporation is inapplicable, inadequate or ineffective.

Contribution re policy under subs. (1)

(4) Notwithstanding section 115 of the Insurance Act, R.S.P.E.I. 1974, Cap. l-5 or the provisions of the policy, a policy of insurance issued under subsection (1) and any other policy of insurance except another policy issued under subsection (1) are not liable to be brought into contribution with each other.

Insurance by corporation for liability re common elements

(5) The corporation shall obtain and maintain such insurance as may be specified in the declaration or bylaws against its liai-
Bility resulting from breach of duty as occupier of the common elements.

(6) Nothing in this section shall be construed to restrict the capacity of a corporation, an owner or any other person to obtain and maintain insurance in respect of any insurable interest.

MANAGEMENT AGREEMENT

19. The corporation may, by a vote of members who own sixty-six and two-thirds per cent of the common elements, terminate, on giving sixty days notice in writing, any agreement between the corporation and any person for the management of the property entered into at a time when the majority of the members of the board of directors were elected when the declarant was the registered owner of a majority of the units.

INVESTIGATION OF RECORDS

20. (1) Every person in receipt of money paid by or on behalf of an owner for the payment of common expenses, shall upon reasonable notice and during normal business hours, make available for examination by the corporation or any owner, mortgagee or chargee, all records relating to the disposition of such money.

(2) Upon application to a judge of the Supreme Court by the corporation or any owner, mortgagee or chargee, the judge, if satisfied that the application is made in good faith and that it is prima facie in the best interests of the applicant to do so, may make an order, upon such terms as to the costs of the investigation or audit otherwise as he considers proper, appointing an inspector to make such investigation of the affairs of any person in receipt of money mentioned in subsection (1) and to make such audit of the accounts and records of such person as the judge considers necessary.

(3) An inspector appointed under subsection (2) has the powers of a commissioner under the Public Inquiries Act, R.S.P.E.I. 1974, Cap. P-30, which Act applies to such investigation or audit as if it were an inquiry under that Act.

(4) All money received for the payment of common expenses relating to a property shall be held by the person in receipt thereof in trust for the performance of the duties and obligations in respect of which the money is paid, and he shall pay such money into a separate account at a chartered bank or trust company or a loan company authorized by law to receive money on deposit and shall designate the account as a trust account.
REPAIRS AND MAINTENANCE

Interpretation

21. (1) For the purposes of this Act, the obligation to repair after damage and to maintain are mutually exclusive, and the obligation to repair after damage does not include the repair of improvements made to units after registration of the declaration and description.

Duty to repair

(2) Subject to section 22, the corporation shall repair the units and common elements after damage.

Maintenance of common elements

(3) The corporation shall maintain the common elements.

Maintenance of units

(4) Each owner shall maintain his unit.

Declaration may provide otherwise

(5) Notwithstanding subsections (2), (3) and (4), the declaration may provide that

(a) each owner shall, subject to section 22, repair his unit after damage;

(b) the owners shall maintain the common elements or any part of the common elements; or

(c) the corporation shall maintain the units.

Where corporation to make repairs for owners

(6) The corporation shall make any repairs that an owner is obligated to make and that he does not make within a reasonable time.

Consent

(7) An owner shall be deemed to have consented to have repairs done to his unit by the corporation under this section.

WHERE DAMAGE OCCURS

Determination of damage

22. (1) Where damage to the buildings occurs, the board shall determine within thirty days of the occurrence whether there has been substantial damage to twenty-five per cent, or such greater percentage as is specified in the declaration, of the buildings.

Vote for repair

(2) Where there has been a determination that there has been substantial damage to twenty-five per cent, or such greater percentage as is specified in the declaration, and owners who own eighty per cent of the common elements, or such greater percentage as is specified in the declaration, vote for repair within sixty days of the determination, the corporation shall repair.
TERMINATION

23. (1) Where on a vote the owners do not vote for repair, the corporation shall, within ten days of the vote, register a notice of termination in the prescribed form.

(2) Where there has been no vote within sixty days of the determination that there has been substantial damage under subsection 22 (1), the corporation shall, within ten days after the expiry of the sixty-day period, register a notice of termination in the prescribed form.

(3) Upon the registration of a notice of termination under subsection (1) or (2)

(a) the government of the property by this Act is terminated;

(b) the owners are tenants in common of the land and interests appurtenant to the land described in the description in the same proportions as their common interests;

(c) claims against the land and interests appurtenant to the land created before the registration of the declaration and description are as effective as if the declaration and description had not been registered;

(d) encumbrances against each unit and common interest created after the registration of the declaration and description are claims against the interest of the owner in the land and interests appurtenant to the land described in the description, and have the same priority they had before the registration of the notice of termination; and

(e) all claims against the property created after the registration of the declaration and description, other than the encumbrances mentioned in clause (d), are extinguished.

24. (1) Sale of the property or any part of the common elements may be authorized

(a) by a vote of owners who own eighty per cent, or such greater percentage as is specified in the declaration, of the common elements; and

(b) by the consent of the persons having registered claims against the property or the part of the common elements, as the case may be, created after the registration of the declaration and description.

(2) A deed or transfer shall be executed by all the owners and a release or discharge shall be given by all the persons having
registered claims against the property or the part of the common elements, as the case may be, created after the registration of the declaration and description.

(3) Upon the registration of the instruments mentioned in subsection (2)

(a) the government of the property or of the part of the common elements by this Act is terminated;

(b) claims against the land and interests appurtenant to the land created before the registration of the declaration and description are as effective as if the declaration and description had not been registered; and

(c) claims against the property or the part of the common elements created after the registration of the declaration and description are extinguished.

(4) Subject to subsection (5), the owners share the proceeds of the sale in the same proportions as their common interests.

(5) Where a sale is made under this section, any owner who dissented may elect to have the fair market value of the property at the time of the sale determined by arbitration under the Arbitration Act, R.S.P.E.I. 1974, Cap. A-14 by serving notice to that effect on the corporation within ten days after the vote, and the owner who served the notice is entitled to receive from the proceeds of the sale the amount he would have received if the sale price had been the fair market value as determined by the arbitration.

(6) Where the proceeds of the sale are inadequate to pay the amount determined under subsection (5) each of the owners, who voted for the sale is liable for a portion of the deficiency determined by the proportions of their common interests.

25. (1) Termination of the government of the property by this Act may be authorized

(a) by a vote of owners who own eighty per cent, or such greater percentage as is specified in the declaration of the common elements; and

(b) by the consent of the persons having registered claims against the property created after the registration of the declaration and description.

(2) Where termination of the government of the property by this Act is authorized under subsection (1), the corporation shall register a notice of termination in the prescribed form, executed by all the owners and all the persons having registered
claims against the property created after the registration of the declaration and description.

(3) Upon the registration of a notice of termination under subsection (2)

(a) the government of the property by this Act is terminated;

(b) the owners are tenants in common of the land and interests appurtenant to the land described in the description in the same proportions as their common interests;

(c) claims against the land and the interests appurtenant to the land described in the description created before the registration of the declaration and description are as effective as if the declaration and description had not been registered;

(d) encumbrances against each unit and common interest created after the registration of the declaration and description are claims against the interest of the owner in the land and interest appurtenant to the land described in the description and have the same priority as they had before the registration of the notice of termination; and

(e) all other claims against the property created after the registration of the declaration and description are extinguished.

26. (1) A corporation, any owner, or any person having an encumbrance against a unit and common interest may apply to the Supreme Court for an order terminating the government of the property by this Act.

(2) The court may order that the government of the property by this Act be terminated if the court is of the opinion that the termination would be just and equitable, and, in determining whether the termination would be just and equitable, the court shall have regard to

(a) the scheme and intent of this Act;

(b) the probability of unfairness to one or more owners if termination is not ordered; and

(c) the probability of confusion and uncertainty in the affairs of the corporation or the owners if termination is not ordered.

(3) Where an order of termination is made under subsection (2), the court may include in the order any provisions that the court considers appropriate in the circumstances.
27. (1) In this section

"assessing Act" means the Real Property Assessment Act, R.S.P.E.I. 1974, Cap. R-5 and any other Act pursuant to which an assessing authority is empowered to assess and levy rates, charges or taxes on land or in respect of the ownership of land;

"assessing authority" means the Minister charged with the administration of the Real Property Assessment Act, R.S.P.E.I. 1974, Cap. R-5, any municipality as defined in the Real Property Tax Act, R.S.P.E.I. 1974, Cap. R-6 or any other authority having power to assess and levy any rates, charges or taxes on land or in respect of the ownership of land.

(2) A corporation shall, within twenty-eight days after the registration of a declaration and description or any amendment thereof, furnish to the assessing authority a certified copy thereof and for the purposes of any assessment or recovery of rates, charges or taxes in respect of any land which is the subject of a declaration and description

(a) the particulars shown on the certified copy of the declaration and description are conclusive proof of those particulars; and

(b) the production by an assessing authority of what purports to be a certified copy of a declaration or description or any amendment thereof is prima facie proof that it is the certified copy furnished pursuant to this subsection.

(3) For the purpose of assessment and taxation by an assessing authority

(a) each unit and common interest constitutes a separate parcel of land and improvements; and

(b) the common elements do not constitute a separate parcel of land or improvements,

and the provisions of an assessing Act or any other Act authorizing or affecting

(c) the assessment or valuation of land and improvements by an assessing authority; or

(d) the imposition of rates, charges or taxes by an assessing authority in respect of land and improvements for municipal, school or other purposes authorized by statute; or
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(e) the collection and recovery of rates, charges or taxes by an assessing authority by proceedings against an assessed owner and his property or the land and improvements against which the rates, charges or taxes are charged,

apply mutatis mutandis to each unit and common interest.

(4) The corporation is not liable for any rate, charge or tax levied by an assessing authority.

VOTING BY MORTGAGEES

28. Where a mortgage or charge of a unit and common interest contains a provision that authorizes the mortgagee or chargee to exercise the right of the owner to vote or to consent, the mortgagee or chargee may exercise the right, and, where two or more such mortgages or charges contain such a provision, the right may be exercised by the mortgagee or chargee who has priority.

PERFORMANCE OF DUTIES

29. (1) Where a duty imposed by this Act, the declaration or the bylaws is not performed, the corporation, any owner, or any person having an encumbrance against a unit and common interest may apply to the Supreme Court for an order directing the performance of the duty.

(2) The court may by order direct performance of the duty, and may include in the order any provisions that the court considers appropriate in the circumstances.

(3) The lessee of a unit is subject to the duties imposed by this Act, the declaration and the bylaws, on an owner, except those duties respecting common expenses. and this section applies in the same manner as to an owner and where the lessee is in contravention of an order under this section, the court may terminate the lease.

(4) Nothing in this section restricts the remedies otherwise available for failure to perform any duty imposed by this Act.

SALE AND LEASE OF UNITS

30. (1) Every agreement of purchase and sale entered into by a proposed declarant for the proposed unit for residential purposes shall be deemed to contain

(a) a covenant by the vendor to take all reasonable steps to register a declaration and description in respect of
the property in which the unit is included without delay;

(b) a covenant by the vendor to take all reasonable steps to sell the other residential units included in the property without delay other than any units mentioned in a statement under clause 33 (1) (c); and

(c) a covenant by the vendor to take all reasonable steps to deliver to the purchaser a registrable deed or transfer of the unit without delay.

(2) Notwithstanding any provision to the contrary contained therein, an agreement of purchase and sale of a proposed unit for residential purposes shall not be terminated by the proposed declarant only by reason of the failure to register the declaration and description within a period of time specified in the agreement, unless the purchaser consents to the termination in writing.

(3) Notwithstanding subsection (2) the proposed declarant may apply to a judge of the Supreme Court and the judge may by order terminate the agreement if he is satisfied that

(a) the proposed declarant has taken all reasonable steps to register a declaration and description;

(b) a declaration and description cannot be registered within a reasonable period of time; and

(c) the failure and inability to register a declaration and description is caused by circumstances beyond the control of the proposed declarant.

(4) The judge may, in an order under subsection (3) provide that a declaration and description shall not be registered in respect of the property in which the proposed unit is included during such period as he specifies in the order.

(5) An order under subsection (3) is ineffective until a certified copy thereof is registered.

(6) Where an agreement of purchase and sale entered into by a proposed declarant for a proposed unit for residential purposes permits or requires the purchaser to take possession of or occupy the unit before a deed or transfer of the unit acceptable for registration is delivered to him, the money paid in respect of such right or obligation to the proposed declarant shall be credited as payments of the purchase price unless the agreement states that the money or any part of it will not be so credited.

31. (1) An agreement of purchase and sale entered into by a declarant of a unit for residential purposes is not binding on the
purchaser unless the declarant has previously delivered to the purchaser a copy of

(a) the declaration;

(b) those parts of the description showing
   
   (i) the perimeter of the horizontal surface of the land and the perimeter of the buildings,

   (ii) the shape and dimensions of the unit, the boundaries of the unit by reference to the buildings and the approximate location of the unit in relation to the other units and the buildings, and

   (iii) any parts of the common elements that are to be used by the owners of one or more designated units and not by all the owners;

(c) a statement of the recreational or other amenities intended to be provided by the declarant for the enjoyment of the owners and of the conditions, if any, that apply to the provision of such amenities.

(d) any bylaws or any rules governing the use of common elements;

(e) any agreement for the management of the property or insurance trust agreement; and

(f) where the agreement for purchase and sale is entered into within the year immediately following the registration of the declaration and description, a budget statement prepared by the declarant for the year immediately following the registration of the declaration and description setting out the common expenses, the proposed amount of each expense, particulars of the service to be provided and the amount to be contributed by the purchaser for the year.

(2) An agreement of purchase and sale entered into by a proposed declarant for a proposed unit for residential purposes shall not be binding on the purchaser unless the proposed declarant has previously delivered to the purchaser a copy of

(a) the proposed declaration;

(b) those parts of the proposed description showing
   
   (i) the perimeter of the horizontal surface of the land and perimeter of the buildings,

   (ii) the shape and dimensions of the unit, the boundaries of the unit by reference to the buildings and
the approximate location of the units in relation to the other units and the buildings, and

(iii) any parts of the common elements that are to be used by the owners of one or more designated units and not by all the owners;

(c) a statement of the recreational or other amenities intended to be provided by the declarant for the enjoyment of the owners and of the conditions, if any, that apply to the provision of such amenities;

(d) any proposed bylaws or any proposed rules governing the use of common elements;

(e) any agreement or proposed agreement for the management of the property or insurance trust agreement; and

(f) a budget statement prepared by the proposed declarant for the year immediately following the registration of the declaration and description setting out the common expenses, the proposed amount of each expense, particulars of the service to be provided and the amount to be contributed by the purchaser for the year.

(3) Where an agreement of purchase and sale to which subsection (2) applies has been entered into, the proposed declarant shall at least ten days before delivering a deed or transfer for the unit to the purchaser, deliver to the purchaser a further copy of each document or instrument mentioned in subsection (1) or confirmation that the document or instrument is identical in all substantial or material respects to a corresponding document or instrument previously delivered to him under subsection (2).

(4) Where the total amount incurred for the common expenses provided for in the statement mentioned in clause (1) (f) or (2) (f) exceeds the total of the proposed amounts set out in the statement, the declarant shall forthwith pay to the corporation the amount of the excess except in respect of increased expenses attributable to the termination of an agreement under section 19.

32. (1) All money received by or on behalf of a proposed declarant from a purchaser on account of a sale or an agreement for the purchase and sale of a proposed unit for residential purposes before the registration of the declaration and description, other than money paid as rent or as an occupancy charge, shall be held in trust by the person receiving such money for the person entitled thereto in respect of the agreement and such money shall be held in a separate account designated as a trust account at a chartered bank or trust

Inaccurate statement of common expenses

Trust money
A declarant or proposed declarant shall not grant a lease of a unit or proposed unit for residential purposes unless

(a) the lessee has entered into a *bona fide* agreement to purchase the unit;

(b) the lease grants to the lessee a *bona fide* option to purchase the unit;

(c) every agreement of purchase and sale of a unit included in the property includes a statement that the unit to be included in the lease is or will be leased and specifies the uses that are or will be permitted by the lease; or

(d) written notice of the lessor’s intention to lease the unit has been given to every purchaser under an agreement of purchase and sale, registered owner and mortgagee and chargee entitled to vote, and the period referred to in subsection (2) has expired or, where an application is made under subsection (2), it is finally disposed of.

(2) Any person notified under clause (1) (d) may, within twenty-one days after receiving the notice, and on written
notice to the declarant, apply to a judge of the Supreme Court, and the judge, if he is of the opinion that the declarant has not taken all reasonable steps to sell the unit, may by order prohibit the declarant from leasing the unit or grant such other relief as he considers proper.

(3) The notice mentioned in clause (1) (d) shall specify the unit or units intended to be leased and the uses that will be permitted by the lease but need not set out any other terms or identify any proposed lessee.

(4) A declarant or proposed declarant may grant leases of a unit or proposed unit for residential purposes for a period in each case not exceeding two years, including renewals, provided that subsection (1) is complied with in respect of each lease.

(5) This section does not apply to the renewal of a lease of a unit or proposed unit entered into before any agreement of purchase and sale of any unit or proposed unit included in the property is entered into.

(6) In this section, "lease" includes a license to use or occupy and any agreement in the nature of a lease.

**LEASEHOLD CONDOMINIUMS**

34. (1) A person who is the lessee of land owned by and leased from the Crown or any agency of the Crown designated in the regulations for a term of not less than ninety-nine years may, with the consent of the Crown or the agency, register a declaration and description.

(2) The Crown or agency may enter into a lease of land with itself for the purposes of this section, in which case the lease shall not merge in the fee by operation of law.

(3) Upon the registration of a declaration and description under this section, the land and the interests appurtenant to the land described in the description are governed by this Act which, subject to subsection (6), applies mutatis mutandis thereto.

(4) The lessee from the Crown or agency who registers a declaration and description under this section may assign or transfer the leasehold estate in respect of each unit designated in the description and for the purposes of this Act he shall be deemed to be the declarant and the assignee shall be deemed to be the owner of the unit.

(5) Part V of the Landlord and Tenant Act, R.S.P.E.I. 1974, Cap. L-7 does not apply in respect of leases or assignments or transfers thereof that are subject to this section.
(6) The Lieutenant Governor in Council may make regulations

(a) designating provisions of this Act that do not apply to properties in respect of which this section applies;

(b) making such modifications to the application of the provisions of this Act, other than this section, that apply to properties under this section as are considered necessary to adapt their application mutatis mutandis to leasehold condominium projects;

(c) providing for such matters as are considered necessary for the purpose of effecting condominium projects in respect of leasehold land that are equivalent to those provided for by this Act in respect of freehold land;

(d) designating agencies of the Crown for the purpose of subsection (1).

35. Every person who knowingly contravenes subsection 20 (1) or (4), or subsection 32 (1) or knowingly purports to enter into a lease in contravention of subsection 33 (1) or (4), is guilty of an offence and on summary conviction is liable to a fine of

(a) not more than twenty-five thousand dollars, where the person is a corporation; or

(b) not more than two thousand dollars, where the person is other than a corporation.

REGULATIONS

36. (1) The Lieutenant Governor in Council may make regulations

(a) classifying properties for the purposes of the regulations;

(b) prescribing the duties of officers appointed under the Registry Act, R.S.P.E.I. 1974, Cap. R-11 for the purposes of this Act;

(c) governing the method of describing in instruments a property or any part of a property;

(d) governing surveys, structural plans, descriptions and diagrams, and prescribing procedures for their registration and amendment;

(e) requiring, in respect of any class of properties, in lieu of or in addition to the requirements of section 4, surveys of the properties showing the units and common elements;
(f) respecting the registration and recording of declarations, descriptions, bylaws, notices of termination and other instruments;

(g) respecting the names of corporations;

(h) respecting additions to the common elements;

(i) requiring the payment of fees to officers appointed under the Registry Act, R.S.P.E.I. 1974, Cap. R-11, and prescribing the amounts thereof;

(j) prescribing forms and providing for their use;

(k) governing funds intended for the payment of common expenses;

(l) requiring and governing the books, accounts and records that shall be kept by condominium corporations and requiring and governing the accounting to members of condominium corporations in such manner and at such times as are prescribed;

(m) exempting any class of person from this Act or the regulations or any provision thereof;

(n) prescribing security for the purposes of clause 32 (1) (b);

(o) prescribing rates of interest that shall be paid on moneys required to be held in trust under this Act;

(p) respecting access to the property by candidates or other persons for the purpose of canvassing or distributing election material; and

(q) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

Application of regulations

Any provision of any regulation may be made to apply to all properties or to any class of properties.

Commencement

37. This Act or any section thereof comes into force on such date as may be fixed by proclamation of the Lieutenant Governor in Council.
CHAPTER C-26.

An Act to Facilitate the Division of Buildings into Separately Owned Units.

SHORT TITLE.

1. This Act may be cited as The Condominium Property Act.

INTERPRETATION.

2. — (1) In this Act:

(a) "board" means the board of a corporation as provided for in section 19;

(b) "building" or "buildings" means the building shown in a condominium plan;

(c) "bylaws" means the bylaws of a corporation;

(d) "common property" means so much of the land comprised in a condominium plan as is not comprised in any unit shown in a condominium plan;

(e) "condominium plan" means a plan that:

(i) is described in the heading thereto as a condominium plan;

(ii) shows the whole or any part of the building comprised therein as being divided into two or more units; and

(iii) complies with the requirements of section 7; and includes a plan of redivation of any unit in a condominium plan registered under this Act;

(f) "corporation" means a corporation constituted pursuant to section 16;

(g) "developer" means the owner of a parcel;

(h) "local authority" means, in relation to a parcel, the municipal body governing the area in which the parcel is situated;

(i) "owner" means the owner of a unit;

(j) "parcel" means the land comprised in a condominium plan;

(k) "unanimous resolution" means a resolution unanimously passed at a properly convened meeting of a corporation at
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which all persons entitled to exercise the powers of voting conferred by this Act or the bylaws are present personally or by proxy at the time of the voting;

(1) “unit” means an area designated as a unit in a condominium plan;

(2) Other expressions used in this Act and not defined in subsection (1) have the same meanings as may be assigned to them in The Land Titles Act, 1968, c. 14, s. 2; 1976-77, c. 13, s. 2.

FORMATION OF CONDOMINIUMS.

3. — (1) A building may be divided into units by the registration of a condominium plan in the manner provided by this Act and the regulations.

(2) For the purposes of The Land Titles Act, a condominium plan shall be deemed upon registration to be embodied in the register.

(3) This Act applies only with respect to land held in fee simple and nothing done under this Act includes, confers or affects any interest in mines and minerals within, upon or under the parcel included in the plan. 1968, c. 14, s. 3.

4. — (1) Upon registering a condominium plan the registrar shall:

(a) cancel the certificate of title and duplicate certificate of title thereof to the parcel described in the plan, except as to any mines and minerals comprised therein; and

(b) issue a separate certificate of title and duplicate certificate of title for each unit described in the plan;

and any interests affecting the parcel that are noted on the certificate of title cancelled under clause (a) shall be endorsed upon the condominium plan and not upon the certificates of title issued under clause (b).

(2) No more than one unit shall be included in one certificate of title and no other land, except the owner’s share in the common property, shall be included in the same certificate of title with a unit.

(3) After a certificate of title to a unit is issued pursuant to subsection (1), the unit comprised therein may devolve or be transferred, leased, mortgaged or otherwise dealt with in the same manner and form as any land held under The Land Titles Act and memoranda showing such dealings shall be made by the registrar upon the certificate of title of the unit affected. 1968, c. 14, s. 4.
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5.—(1) The registrar, in issuing a certificate of title for a unit, shall certify therein the owner's share in the common property.

(2) The common property comprised in a registered condominium plan is held by the owners of all the units as tenants in common in shares proportional to the unit factors for their respective units.

(3) Except as provided in this Act, a share in the common property shall not be disposed of or become subject to any charge except as appurtenant to the unit of an owner and any disposition of or charge upon a unit operates to dispose of or charge that share in the common property without express reference thereto. 1968, c. 14, s. 5.

6.—(1) An owner holds his unit and his share in the common property subject to any interests affecting the unit or the condominium plan.

(2) Except to the extent that an interest noted on a condominium plan relates to a particular unit, the owner of a unit is liable only in respect of any such interest in proportion to the unit factor for his unit. 1968, c. 14, s. 6.

CONDOMINIUM PLANS.

7.—(1) Every plan presented for registration as a condominium plan shall:

(a) delineate the external surface boundaries of the parcel and the location of the building in relation thereto;

(b) bear a statement containing such particulars as may be necessary to identify the title to the parcel;

(c) include a drawing illustrating the units and distinguishing such units by numbers or other symbols;

(d) define the boundaries of each unit in the building by reference to floors, walls and ceilings;

(e) show the approximate floor area of each unit;

(f) have endorsed upon it a schedule specifying in whole numbers the unit factor for each unit in the parcel;

(g) have endorsed upon it the address at which documents may be served on the corporation concerned in accordance with section 43;

(h) be signed by the developer; and

(i) contain such other features as may be prescribed by the regulations.

(2) Unless otherwise stipulated in the condominium plan, the common boundary of any unit with another unit or with common
8. — (1) Every plan presented for registration as a condominium plan shall be endorsed with or accompanied by:

(a) a certificate of a Saskatchewan land surveyor that the building shown on the plan is within the external surface boundaries of the parcel that is the subject of the plan and, if eaves or guttering project beyond such external boundaries, that an appropriate easement has been granted as an appurtenance of the parcel; and that the units shown in the plan are the same as those existing; and

(b) a certificate of the clerk of the local authority that the proposed division of the building, as illustrated in the plan, has been approved by the local authority.

(2) With respect to a certificate under clause (b) of subsection (1), the local authority upon application therefor shall direct the issue of the certificate if it is satisfied that:

(a) separate occupation of the proposed units will not contravene any development control or zoning bylaw;

(b) any consent or approval required under such a bylaw has been given in relation to the separate occupation of the proposed units;

(c) the building and the division of the building into units for separate occupation will not interfere with the existing or likely future amenity of the neighbourhood, having regard to the circumstances of the case and the public interest; and

(d) when the application relates to the conversion of existing premises used for apartments, flats or tenements into units:

(i) the conversion will not significantly reduce the availability of rental accommodation in the area;

(ii) the conversion will not create significant hardship for any or all of the tenants of the existing premises; and

(iii) the building and the parcel have the physical characteristics considered necessary by the local authority to make the premises suitable for conversion.

(3) The provisions relating to the subdivision of land contained in The Planning and Development Act or the regulations thereunder do not apply to the division of a building pursuant to subsection (1) of section 3, if the surface boundaries of the parcel correspond to the boundaries of a lawful parcel within the meaning of The Planning and Development Act, and any disposition of common property does not contravene the provisions of that Act. 1968, c. 14, s. 8; 1976, c. 8, s. 1.
9.—(1) In this section and section 10:

(a) "additional unit" means a unit not described in a condominium plan but described in a replacement plan, and includes a unit in an additional building or in an extension to a building shown on the condominium plan;

(b) "replacement plan" means a condominium plan showing the parcel, building and units as on the original plan and the additional units and land, if any, intended to be brought in.

(2) When a condominium plan is registered, the developer may file with the registrar a caveat against the condominium plan, at any time before he transfers title to any unit to any person, and the caveat shall reserve to the developer the right to construct additional units on the common property or on additional land and those additional units shall be deemed to be a part of the condominium scheme upon completion of construction.

(3) The caveat mentioned in subsection (2) shall be accompanied by a replacement plan that complies with sections 7 and 8 and a certificate of the Provincial Secretary that the bond mentioned in section 10 has been delivered to him.

(4) The developer shall, within:

(A) two years after the day on which the caveat is filed; or

(b) any period of extension allowed under subsection (6);

register the replacement plan accompanied by a certificate of a registered architect certifying that the additional units have been constructed as shown on the replacement plan.

(5) Where the replacement plan and architect's certificate are not registered within the time required by subsection (4), the caveat shall lapse and all rights reserved to the developer thereunder shall cease.

(6) Where completion of the additional units is delayed:

(a) the owners, by unanimous resolution; or

(b) the Court of Queen's Bench, on application of the developer by originating notice, and on such terms and conditions as the court considers just;

may grant a period of extension, not exceeding six months, for completion of the additional units.

(7) Where the replacement plan and the architect's certificate mentioned in subsection (4) are submitted for registration before the caveat lapses, the registrar shall:

(a) register the replacement plan;

(b) cancel the original condominium plan;
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(c) cancel the certificate of title to any additional land brought into the condominium scheme;

(d) cancel the certificates of title to the units described in the original plan and issue to the owners thereof certificates of title for the same units as described in the replacement plan subject to all interests affecting those units that are endorsed on the cancelled certificates of title; and

(e) issue to the developer certificates of title to the additional units subject to the interests affecting those units that are endorsed on the certificates of title issued under the original plan;

and, except to the extent that any interest endorsed on a certificate of title pursuant to clause (d) or (e) relates to the particular unit, the owner of an original unit or the owner of an additional unit, as the case may be, is only liable in respect of any such interest in the proportion that his unit factor bears to the total of unit factors for the original units or the additional units, as the case may be.

(8) The corporation constituted on the registration of the original condominium plan shall continue in existence after the registration of the replacement plan.

(9) Upon registration of the replacement plan, the replacement plan shall be deemed to be the condominium plan and the name of the corporation shall be changed by striking out the number of the original condominium plan and substituting the number of the replacement plan.

(10) The developer:

(a) shall be responsible for all expenses and liabilities and, without limiting the generality of the foregoing, shall be responsible for property taxes, local improvement charges and fire and public liability insurance incurred, on or in connection with the additional units and any land to be added to the common property, up to the date of registration of the replacement plan pursuant to subsection (7);

(b) shall indemnify and save harmless the owners of the units described in the original condominium plan and the corporation for and from all costs, damages, claims and demands of any kind arising out of or resulting from the exercise of any of the rights reserved to the developer under the caveat filed under this section;

(c) shall be responsible for the fees of the registrar for his services under subsection (7).

(11) Sections 159 and 161 of The Land Titles Act shall not apply to a caveat filed under this section. 1976-77, c. 13, s. 4.

10. — (1) Every developer shall, before filing a caveat against a condominium plan under subsection (2) of section 9, deliver to the
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Provincial Secretary a bond in the amount and form prescribed by the regulations and issued by an insurer licensed under The Saskatchewan Insurance Act to transact guarantee insurance.

(2) Notwithstanding that Her Majesty in right of Saskatchewan has not suffered any loss or damages, every bond delivered to the Provincial Secretary under subsection (1) shall be construed as being a penal bond and, where any such bond is forfeited pursuant to subsection (3), the amount due and owing as a debt to Her Majesty in right of Saskatchewan by the person bound thereby shall be determined as if Her Majesty suffered such loss or damages as would entitle Her Majesty to be indemnified to the maximum amount of liability prescribed by the bond.

(3) Every bond delivered under subsection (1) shall be forfeited upon the demand of the Provincial Secretary where:

(a) the replacement plan and architect's certificate mentioned in subsection (4) of section 9 are not registered within:

(i) two years after the day on which the caveat is filed; or

(ii) any period of extension allowed under subsection (6) of section 9;

and the caveat has lapsed pursuant to subsection (5) of section 9;

(b) final judgement in respect of a claim arising out of a condominium plan or a replacement plan has been entered against the developer; or

(c) the developer commits an act of bankruptcy, whether or not proceedings have been taken under the Bankruptcy Act (Canada).

(4) The Lieutenant Governor in Council may by order direct that any moneys recovered under a forfeited bond be paid over:

(a) to the local registrar of the Court of Queen's Bench in trust for such persons as may become judgment creditors of the developer in respect of a claim arising out of a condominium plan or a replacement plan;

(b) to any trustee, custodian, interim receiver, receiver or liquidator of the developer named in the bond; or

(c) to such persons as may be deemed to be entitled thereto in respect of the condominium plan or replacement plan of the developer;

in accordance with and upon any conditions set forth in the order.

(5) Any moneys not expended under the order of the Lieutenant Governor in Council under subsection (4) shall, after the payment of any expenditures incurred by the Provincial Secretary in connection with the forfeiture of the bond and the determination and settlement of valid claims, be refunded to the surety or obligor under the bond. 1976-77, c. 13, s. 4.
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11.—(1) Any owner may, with the approval of the local authority, redivide his unit by registering a condominium plan relating to the unit so redivided in the manner provided by this Act for the registration of condominium plans.

(2) Except as provided in this section, the provisions of this Act relating to condominium plans apply mutatis mutandis to such a redivision.

(3) Notwithstanding section 16, the owners of units in a condominium plan of redivision are not a corporation, but are, upon the date of registration of the plan of redivision, members of the corporation formed on registration of the original plan.

(4) On registration of a condominium plan of redivision, units comprised therein are subject to the burden and have the benefit of any easements affecting such of the units in the original plan as are included in the plan of redivision.

(5) The schedule endorsed on a plan of redivision, as required by clause (f) of subsection (1) of section 7, shall apportion among the units the unit factor or factors for such unit or units in the original plan as are included in the redivision.

(6) Before registering a condominium plan of redivision, the registrar shall amend the original registered plan in the manner prescribed by the regulations.

(7) Upon registration of a condominium plan of redivision, the land comprised therein shall be dealt with by reference to units in the redivision plan. 1968, c. 14, s. 9.

EASEMENTS.

12. After the registration of a condominium plan, there is implied in respect of each unit shown therein:

(a) in favour of the owner of the unit and as appurtenant thereto, an easement for the subjacent and lateral support thereof by the common property and by every other unit capable of affording support;

(b) in favour of the owner of the unit, and as appurtenant thereto, an easement for the shelter thereof by the common property and by every other unit capable of affording shelter; and

(c) in favour of the owner of the unit, and as appurtenant thereto, easements for the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air and other services, including telephone, radio and television services, through or by means of any pipes, wires, cables or ducts for the time being existing in
the parcel to the extent to which those pipes, wires, cables or ducts are capable of being used in connection with the enjoyment of the unit. 1968, c. 14, s. 10.

13.—(1) After the registration of a condominium plan, there is implied in respect of each unit shown therein:

(a) as against the owner of the unit, an easement, to which the unit is subject, for the subjacent and lateral support of the common property and of every other unit capable of enjoying support;

(b) as against the owner of the unit, an easement, to which the unit is subject, to provide shelter to the common property and to every other unit capable of enjoying shelter; and

(c) as against the owner of the unit, easements, to which the unit is subject, for the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air and other services, including telephone, radio and television services, through or by means of any pipes, wires, cables or ducts for the time being existing within the unit, as appurtenant to the common property and also to every other unit capable of enjoying those easements.

(2) Where an easement is implied by this section, the owner of any utility service who is providing his service to the parcel, or to any unit therein, is entitled to the benefit of any of those easements that are appropriate to the proper provision of that service, but not to the exclusion of the owner of any other utility service. 1968, c. 14, s. 11.

14. Easements or restrictions implied or created by this Act or the bylaws take effect and are enforceable:

(a) without any memorial or notification on that part of the register constituting titles to the dominant or servient tenements; and

(b) without any express indication of those tenements. 1968, c. 14, s. 12.

15. All ancillary rights and obligations reasonably necessary to make easements effective apply in respect of easements implied by this Act, including the right of an owner of a dominant tenement to enter a servient tenement and replace, renew or restore any thing the dominant tenement is entitled to benefit from. 1968, c. 14, s. 13.
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CONDOMINIUM CORPORATION.

16. — (1) Upon registration of a condominium plan, there is con­stituted a corporation under the name “The Owners: Con­dominium Plan No. (number given to plan on registration)

(2) A corporation consists of all those persons:

(a) who are owners of units in the parcel to which the con­dominium plan applies; or

(b) who are entitled to the parcel where the condominium
arrangement is terminated pursuant to section 32 or 33.

(3) Without limiting the powers given to a corporation under
section 14 of The Interpretation Act a corporation may:

(a) sue for and in respect of any damage or injury to the com­mon property caused by any person, whether an owner or
not; and

(b) be sued in respect of any matter connected with the parcel
for which the owners are jointly liable.

(4) The Companies Act does not apply to a corporation. 1968, c. 14, s. 14.

VOTING RIGHTS

17. — (1) The voting rights of an owner are determined by the
unit factor for his unit.

(2) Where the interest of an owner is subject to a registered
mortgage, a power of voting conferred on an owner by this Act or
the bylaws:

(a) if a unanimous resolution is required, may not be exer­cised by the owner, but is exercisable by the registered
mortgagee first entitled in priority; and

(b) in other cases, is exercisable by the mortgagee first
entitled in priority, and may only be exercised by the owner
if the mortgagee is not present personally or by proxy.

(3) Subsection (2) does not apply unless the mortgagee has
given written notice of his mortgage to the corporation. 1968, c. 14,
s. 15.

18. — (1) Any powers of voting conferred by this Act or the
bylaws may be exercised:

(a) in the case of an owner who is an infant, by the guardian of
his estate or, if no guardian has been appointed, by the Offi­
cial Guardian; or
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(b) in the case of an owner who is for any reason unable to control his property, by the person who for the time being is authorized by law to control that property.

(2) Where the court, upon the application of a corporation or of any owner, is satisfied that there is no person capable, willing, or reasonably available to vote in respect of a unit, the court:

(a) shall, in a case where a unanimous resolution is required by this Act; and

(b) may, in its discretion, in any other case;

appoint the Official Guardian or some other fit and proper person for the purpose of exercising such of the powers of voting under this Act and the bylaws, as the court determines.

(3) On making an appointment under this section, the court may make such order as it considers necessary or expedient to give effect to the appointment. 1968, c. 14, s. 16.

BOARD OF A CORPORATION

19.—(1) A corporation shall have a board of managers which shall be constituted as provided by the bylaws of the corporation.

(2) The powers and duties of a corporation shall, subject to any restriction imposed or direction given at a general meeting, be exercised and performed by the board.

(3) All acts done in good faith by a board are, notwithstanding that it is afterwards discovered that there was some defect in the election or appointment or continuance in office of any member of the board, as valid as if the member had been properly elected or appointed or had properly continued in office. 1968, c. 14, s. 17.

BYLAWS.

20.—(1) A building shall be regulated by bylaws made by the corporation which shall provide for the control, management, administration, use and enjoyment of the units and of the common property.

(2) Until bylaws are made in that behalf, the bylaws set forth in Schedule A and Schedule B are, on and after the registration of a condominium plan, in force for all purposes in relation to the parcel and the units and common property therein.

(3) The bylaws set forth in Schedule A shall not be added to, amended or repealed except by unanimous resolution.

(4) An addition to or amendment or repeal of any bylaw set forth in Schedule A has no effect:
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(a) until the corporation lodges a copy of the amendment or repeal with the registrar; and
(b) until the registrar has made reference thereto on the registered plan.

(5) No bylaw or addition to or amendment or repeal of any bylaw shall prohibit or restrict the devolution of units or any transfer, lease, mortgage or other dealing therewith or destroy or modify any easement implied or created by this Act.

(6) The bylaws bind the corporation and the owners to the same extent as if the bylaws had been signed and sealed by the corporation and by each owner and contained covenants on the part of each owner with every other owner and with the corporation to observe, perform and be bound by all the provisions of the bylaws.

(7) A corporation shall, on the application of an owner or any person authorized in writing by him, make its bylaws available to the owner or any such person for inspection. 1968, c. 14, s. 18.

POWERS AND DUTIES OF CORPORATION.

21.—(1) A corporation is responsible for the enforcement of its bylaws and the control, management and administration of the common property.

(2) A corporation shall be regulated in accordance with the bylaws thereof.

(3) Without restricting the generality of subsection (1), the duties of a corporation include the following duties:

(a) to keep in a state of good and serviceable repair and properly maintain the common property;

(b) to comply with notices or orders by any local authority or public authority requiring repairs to or work to be done in respect of the parcel; and

(c) to comply with any reasonable request for the names and addresses of the persons who are members of the board. 1968, c. 14, s. 19.

22.—(1) In addition to its other powers under this Act, a corporation has the following powers:

(a) to establish a fund for administrative expenses sufficient, in the opinion of the corporation, for the control, management and administration of the common property, for the payment of any premiums of insurance and for the discharge of any other obligation of the corporation;

(b) to determine from time to time the amounts to be raised for the purposes mentioned in clause (a);
(c) to raise amounts so determined by levying contributions on the owners in proportion to the unit factors for their respective units; and

(d) to recover from any owner by an action for debt any sum of money expended by the corporation for repairs to or work done by it or at its direction in complying with any notice or order by a local authority or public authority in respect of that portion of the building comprising the unit of that owner.

(2) Subject to clause (b) of subsection (1), any contribution levied as provided in that subsection is due and payable on the passing of a resolution by the corporation to that effect and in accordance with the terms of the resolution, and may be recovered by an action for debt by the corporation:

(a) from the proper owner at the time when the resolution was passed; and

(b) from the proper owner at the time when the action was instituted.

(3) A corporation shall, on the application of an owner or any person authorized in writing by him, make a statement certifying:

(a) the amount of any contribution determined as the contribution of the owner;

(b) the manner in which the contribution is payable; and

(c) the extent to which the contribution has been paid by the owner;

and the certified statement is conclusive proof of the matters certified therein. 1968, c. 14, s. 20.

INSURANCE.

23.—(1) Every corporation shall:

(a) insure and keep insured the building to the replacement value thereof against fire and such other risks as may be prescribed by the regulations, unless otherwise resolved by unanimous resolution;

(b) insure against such other risks as may be determined by a unanimous resolution;

(c) subject to sections 32 and 33, apply insurance moneys received by it in respect of damage to the building forthwith in rebuilding and reinstating the building so far as that may lawfully be effected; and

(d) pay premiums on any policies of insurance effected by it.

(2) For the purpose of effecting any insurance under clause (a) of subsection (1), a corporation has an insurable interest to the
replacement value of the building and for the purpose of effecting any other insurance under subsection (1) has an insurable interest in the subject matter of that insurance.

(3) A policy of insurance authorized by this section and taken out by a corporation in respect of the building is not liable to be brought into contribution with any other policy of insurance except another policy authorized by this section in respect of the same building. 1968, c. 14, s. 21.

24.—(1) Where a building is insured to its replacement value, the owner of a unit may effect a policy of insurance in respect of any damage to his unit in a sum equal to the amount secured, at the date of any loss referred to in the policy, by mortgage upon his unit.

(2) Where a policy of insurance authorized by this section is in force:

(a) payment shall be made by the insurer under the policy to the mortgagees whose interests are noted thereon in order of their priorities, subject to the terms and conditions of the policy;

(b) subject to the terms and conditions of the policy, the insurer is liable to pay thereunder:

(i) the value stated in the policy;

(ii) the amount of the loss; or

(iii) an amount sufficient, at the date of the loss, to discharge mortgages charged upon the unit.

whichever is the least amount;

(c) if the amount so paid by the insurer equals the amount necessary to discharge a mortgage charged upon the unit, the insurer is entitled to an assignment of that mortgage; and

(d) if the amount so paid by the insurer is less than the amount necessary to discharge a mortgage charged upon the unit, the insurer is entitled to an assignment of a partial interest in the mortgage to secure the amount so paid. 1968, c. 14, s. 22.

25.—(1) Where a building is uninsured or has been insured to less than its replacement value, an owner may:

(a) effect a policy of insurance in respect of any damage to his unit in a sum equal to the replacement value of his unit less a sum representing the amount to which his unit is insured under any policy of insurance effected on the building; or

(b) notwithstanding any existing policies, effect a policy of insurance in respect of damage to his unit in a sum equal to the amount secured, at the date of any loss referred to in the last mentioned policy, by mortgages upon his unit, and sub-
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section (2) of section 24 applies in respect of any payment pursuant to that last mentioned policy.

(2) For the purposes of subsection (1), the amount for which a unit is insured under a policy of insurance effected in respect of the building shall be determined by multiplying the value stated in the policy by the unit factor for the unit and dividing the product so obtained by the sum of the unit factors for all units. 1968, c. 14, s. 23.

26.—(1) A policy of insurance authorized by section 24 or 25 and taken out by an owner in respect of damage to his unit is not liable to be brought into contribution with any other policy of insurance except another policy authorized by those sections and taken out in respect of damage to the same unit.

(2) Nothing in Section 24 or 25 limits the right of an owner to insure against risks other than damage to his unit.

(3) Sections 24 and 25 apply notwithstanding The Saskatchewan Insurance Act or any other law relating to insurance. 1968, c. 14, s. 24.

DISPOSITIONS OF COMMON PROPERTY

27.—(1) By a unanimous resolution a corporation may be directed to transfer or lease the common property, or any part thereof.

(2) Where the board is satisfied that the resolution was properly passed and that all persons having registered interests in the parcel and all other persons having interests, other than statutory interests, which have been notified to the corporation:

(a) have, in the case either of a transfer or a lease, consented in writing to the release of those interests in respect of the land comprised in the proposed transfer; or

(b) have, in the case of a lease, approved in writing of the execution of the proposed lease;

the corporation shall execute the appropriate transfer or lease.

(3) A transfer or lease executed in accordance with subsection (2) is valid and effective without execution by any person having an interest in the common property and the receipt of the corporation for the purchase money, rent, premiums or other moneys payable to the corporation under the terms of the transfer or lease is a sufficient discharge of and exonerates the persons taking under the transfer or the lease from any responsibility for the application of the moneys expressed to have been so received.

(4) The registrar shall not register a transfer or lease authorized under this section unless it has endorsed thereon or is accompanied by a certificate under the seal of the corporation stating:
(a) that the resolution mentioned in subsection (1) was properly passed;

(b) that the transfer or lease conforms with the terms thereof; and

(c) that all necessary consents were obtained.

(5) The certificate referred to in subsection (4) is:

(a) in favour of a purchaser or lessee as the case may be of the common property, or part thereof; and

(b) in favour of the registrar;

conclusive proof of the facts stated therein.

(6) Upon the filing for registration of a transfer of common property, the registrar shall:

(a) before issuing a certificate of title, amend the registered condominium plan by deleting therefrom the common property comprised in the transfer; and

(b) register the transfer by issuing to the transferee a certificate of title for the land transferred, but no notification of the transfer shall be made on any other certificate of title in the register.

(7) Upon the filing for registration of a lease of common property, the registrar shall register the lease by noting it on the registered condominium plan in the manner prescribed by the regulations. 1968, c. 14, s. 25.

28. By unanimous resolution a corporation may be directed to accept on behalf of the owners a grant of easement or a restrictive covenant benefitting the parcel. 1968, c. 14, s. 26.

29.—(1) By a unanimous resolution a corporation may be directed to execute on behalf of the owners a grant of easement or a restrictive covenant burdening the parcel.

(2) When the board is satisfied that the resolution was properly passed and that:

(a) all persons having interests in the parcel; and

(b) all other persons having interests, other than statutory interests, that have been notified to the corporation;

have consented in writing to the release of those interests in respect of the land comprised in the proposed disposition, the corporation shall execute the appropriate instrument to grant the easement or covenant.

(3) An instrument granting an easement or covenant executed in accordance with subsection (2) is valid and effective without execution by any person having an interest in the parcel, and the
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receipt of the corporation is a sufficient discharge of and exonerates all persons taking under the instrument from any responsibility for the application of the moneys expressed to have been so received.

(4) The registrar shall not register an instrument granting an easement or covenant authorized under this section unless it has endorsed thereon or is accompanied by a certificate under the seal of the corporation stating that the resolution mentioned in subsection (1) was properly passed and that all necessary consents were given.

(5) The certificate referred to in subsection (4) is:

(a) in favour of a person dealing with the corporation under this section; and

(b) in favour of the registrar;

conclusive proof of the facts stated therein.

(6) The registrar shall register the instrument granting the easement or covenant by noting it on the registered condominium plan in the manner prescribed by the regulations. 1968, c. 14, s. 27.

30.—(1) A corporation or any person having an interest in a unit may apply to the court for the appointment of an administrator.

(2) The court may in its discretion appoint an administrator for an indefinite period or for a fixed period on such terms and conditions as to remuneration or otherwise as it thinks fit.

(3) The remuneration and expenses of an administrator appointed under this section are administrative expenses within the meaning of this Act.

(4) An administrator has, to the exclusion of the board and the corporation, the powers and duties of the corporation or such of those powers and duties as the court orders.

(5) An administrator may delegate any of the powers so vested in him.

(6) The court may, in its discretion on the application of an administrator or any person referred to in subsection (1), remove or replace the administrator. 1968, c. 14, s. 28.

DAMAGE TO BUILDING.

31.—(1) Where a building is damaged but the condominium status is not terminated pursuant to section 32 or 33, an application to settle a scheme may be made to the court by the corporation or by an owner or by a registered mortgagee of a unit.

(2) On an application under this section the court may, by order, settle a scheme including provisions:
(a) for the reinstatement in whole or in part of the building; or

(b) for transfer of the interests of owners of units that have been wholly or partially destroyed to the other owners in proportion to their unit factors.

(3) In the exercise of its powers under subsection (2), the court may make such orders as it considers necessary or expedient for giving effect to the scheme, including orders:

(a) directing the application of insurance moneys received by the corporation in respect of damage to the building;

(b) directing payment of money by the corporation or by owners or by one or more of them;

(c) directing such amendment of the condominium plan as the court thinks fit, so as to include in the common property any accretion thereto; and

(d) imposing such terms and conditions as it thinks fit.

(4) On an application to the court under this section an insurer who has effected insurance on the building or any part thereof, being insurance against destruction of units or damage to the building, has the right to appear in person or by agent or counsel. 1968, c. 14, s. 29.

TERMINATION OF CONDOMINIUM.

32. The condominium status of a building may be terminated by a unanimous resolution. 1968, c. 14, s. 30.

33. — (1) An application to terminate the condominium status of a building may be made to the court by the corporation or by an owner or by a registered mortgagee of a unit.

(2) On an application under this section, if the court is satisfied that, having regard to the rights and interests of the owners as a whole, it is just and equitable that the condominium status of the building should be terminated, the court may make a declaration to that effect.

(3) Where a declaration has been made pursuant to subsection (2), the court may, by order, impose such conditions and give such directions, including directions for the payment of money, as it thinks fit for the purpose of adjusting the effect of the declaration as between the corporation and the owners and as amongst the owners themselves.

(4) On any application to the court under this section any insurer who has effected insurance on the building or any part thereof, being insurance against destruction of units or damage to the building, has the right to appear in person or by agent or counsel. 1968, c. 14, s. 31.
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34.—(1) Upon the condominium status of the building being terminated under section 32 or 33, the corporation shall forthwith lodge with the registrar a notice of the termination in the form prescribed.

(2) Upon receipt of the notice referred to in subsection (1), the registrar shall make a notification thereof on the registered condominium plan in the manner prescribed by the regulations and upon the notification being made, the owners of the units in the plan are entitled to the parcel as tenants in common in shares proportional to the unit factors of their respective units. 1968, c. 14, s. 32.

35.—(1) Where the condominium status of a building is being terminated the corporation may be directed, by a unanimous resolution, to transfer the parcel, or any part thereof.

(2) Where the board is satisfied that the resolution was properly passed, and that:

(a) all persons having registered interests in the parcel; and
(b) all other persons having interests, other than statutory interests, that have been notified to the corporation;

have consented in writing to the release of those interests in respect of the land comprised in the proposed disposition, the corporation shall execute the appropriate transfer.

(3) A transfer executed pursuant to subsection (2) is valid and effective without execution by any person having an interest in the parcel, and the receipt of the corporation is sufficient discharge of and exonerates the person taking under the transfer from any responsibility for the application of the moneys expressed to have been so received.

(4) The registrar shall not register a transfer executed pursuant to this section:

(a) unless the transfer has endorsed thereon or is accompanied by a certificate under the seal of the corporation stating that the resolution was properly passed and that all necessary consents were obtained; and
(b) until the notification required by section 32 has been made on the registered condominium plan.

(5) A certificate made pursuant to subsection (4) is:

(a) in favour of a purchaser of the parcel; and
(b) in favour of the registrar;

conclusive proof of the facts stated therein.

(6) Where land is transferred by a corporation pursuant to this section, the registrar shall:
(a) cancel the certificates of title relating to the units; and

(b) register the transfer by issue to the transferee of a certificate of title for the land transferred;

whether or not he is in possession of the duplicate certificates of title for the units. 1968, c. 14, s. 33.

DISSOLUTION OF CORPORATION.

36.—(1) The court on the application of a corporation or any member thereof or an administrator appointed under section 30 may, by order, provide for the winding up of the affairs of a corporation.

(2) By the same or subsequent order the court may declare the corporation dissolved as on and from a date specified in the order. 1968, c. 14, s. 34.

ASSESSMENT AND TAXATION.

37. In sections 37 to 41:

(a) "assessing Act" means any Act pursuant to which an assessing authority is empowered to assess and levy rates, charges or taxes on land or in respect of the ownership of land, and includes any bylaws or regulations made under the authority of any such Act;

(b) "assessing authority" means any local authority or any school board or other authority having power to assess and levy any rates, charges or taxes on land or in respect of the ownership of land. 1968, c. 14, s. 35.

38.—(1) A corporation shall, within twenty-eight days after the registration of a condominium plan or any amendment thereof, furnish to the assessing authority two copies of the registered condominium plan or any amendment thereof, including all endorsements thereon, certified as prescribed by the regulations.

(2) For all purposes in relation to the making, levying, imposition, assessment or recovery of rates, charges or taxes in relation to the parcel or any part thereof:

(a) the particulars shown on the certified copy of the plan or any amendment thereof furnished pursuant to subsection (1) are conclusive proof of those particulars; and

(b) the production by an assessing authority of a plan that purports to be a certified copy of a condominium plan or any amendment thereof furnished pursuant to subsection (1) is prima facie proof that it is the certified copy so furnished. 1968, c. 14, s. 36.
39. — (1) Where an assessing authority causes a parcel to be assessed pursuant to an assessing Act:

(a) notwithstanding the assessing Act or any other Act, the parcel shall be assessed as a single parcel and as if it was owned by a single owner; and

(b) for the purposes of that assessment and all other purposes incidental thereto, including objection to an assessment, but not otherwise, the parcel and all improvements thereon shall be deemed to be owned by the corporation and by no other person;

and the assessing authority is not required to make separate assessments of any part of a parcel otherwise than if the parcel was owned by a single owner.

(2) During the period from the registration of a condominium plan and until an assessment of the parcel showing the corporation as owner becomes effective for taxing purposes the assessment then in force shall, for the purposes of section 40, be deemed to be an assessment of the parcel made by the assessing authority showing the corporation as owner.

(3) The corporation shall make available for the inspection of the owners the assessment notice received by it and shall, on the request of any owner, convene a meeting of the corporation for the purpose of deciding if the assessment should be appealed. 1968, c. 14, s. 37.

40. Where an assessing authority uses an assessment of a parcel showing a corporation as owner, the following provisions apply:

(a) the assessed value of the parcel shown in the assessment shall be apportioned by the assessing authority between the units comprised in the parcel in proportion to the unit factors for the respective units as shown on the registered condominium plan or any amendment thereof;

(b) the corporation is not liable in relation to the parcel for any rate, charge or tax levied by the assessing authority;

(c) the owner of each unit comprised in the parcel is deemed to be the owner in fee simple in possession of the unit as if it was a separate parcel of land and improvements having an assessed value equal to that apportioned to it under clause (a) and is, subject to any exemptions or concessions that may be applicable, liable accordingly for any rate, charge or tax levied by the assessing authority on the owners of land and improvements. 1968, c. 14, s. 38.

41. Except as varied by sections 38 to 40, the provisions of any other Act authorizing or affecting:
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tent therewith; and every regulation made under and in accordance with the authority granted by this section has the force of law; and, without restricting the generality of the foregoing, the Lieutenant Governor in Council may make such regulations, not inconsistent with any other provision of this Act, respecting:

(a) forms to be used for the purposes of this Act, including the form of certificates of title to units;
(b) the manner of registering a condominium plan;
(c) the fees to be paid under this Act or the regulations;
(d) the form and terms and conditions of any bond to be delivered under this Act and the amount thereof or the manner of determining the amount thereof;
(e) all matters that by this Act are required or permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act. 1968, c. 14, s. 47; 1976-77, c. 13, s. 5.

SCHEDULE A.
(Section 20)

1. An owner shall:
(a) permit the corporation and its agents, at all reasonable times on notice, except in case of emergency when no notice is required, to enter his unit for the purpose of inspecting the unit and maintaining, repairing or renewing pipes, wires, cables and ducts for the time being existing in the unit and capable of being used in connection with the enjoyment of any other unit of common property, or for the purpose of maintaining, repairing or renewing common property, or for the purpose of ensuring that the bylaws are being observed;
(b) forthwith carry out all work that may be ordered by any municipality or public authority in respect of his unit, other than such work as may be for the benefit of the building generally and pay all rates, taxes, charges, outgoings and assessments that may be payable in respect of his unit;
(c) repair and maintain his unit, and keep it in a state of good repair, reasonable wear and tear and damage by fire, storm, tempest or act of God excepted;
(d) use and enjoy the common property in such a manner as to not unreasonably interfere with the use and enjoyment thereof by other owners or their families or visitors;
(e) not use his unit or permit it to be used in any manner or for any purpose that will cause a nuisance or hazard to any occupier of a unit, whether an owner or not, or the family of such an occupier; and
(f) notify the corporation forthwith upon any change of ownership or of a mortgage or other dealing in connection with his unit.

2. The corporation shall:
(a) control, manage and administer the common property for the benefit of all owners;
(b) keep in a state of good and serviceable repair and properly maintain the fixtures and fittings, including elevators, if any, used in connection with the common property;
(c) where practicable establish and maintain suitable lawns and gardens on the common property;
(d) maintain and repair, including renewal where reasonably necessary, pipes, wires, cables and ducts for the time being existing in the parcel and capable of being used in connection with the enjoyment of more than one unit or common property, and
(e) on the written request of an owner or registered mortgagee of a unit, produce to the owner or mortgagee, or a person authorized in writing by the owner or mortgagee, the policy or policies of insurance effected by the corporation, and the receipt or receipts for the last premium or premiums in respect thereof.
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3. The corporation may:
   (a) purchase, hire or otherwise acquire personal property for use by owners in connection
       with their enjoyment of common property;
   (b) borrow moneys required by it in the performance of its duties or the exercise of its
       powers;
   (c) secure the repayment of moneys borrowed by it, and the payment of interest thereon,
       by negotiable instrument, or mortgage of unpaid contributions, whether levied or not,
       or mortgage of any property vested in it, or by combination of those means;
   (d) invest as it may determine any moneys in the fund for administrative expenses;
   (e) make an agreement with any owner or occupier of a unit for the provision of amenities
       or services by it to the unit or to the owner or occupier thereof;
   (f) grant to an owner the right to exclusive use and enjoyment of common property, or
       special privileges in respect thereof, but any such grant shall be determinable on
       reasonable notice unless the corporation by unanimous resolution otherwise resolves,
       and
   (g) do all things reasonably necessary for the enforcement of the bylaws and the control,
       management and administration of the common property.

4. The board shall consist of not less than three or more than seven owners and shall be
   elected at each annual general meeting, but where there are not more than three owners, the
   board shall consist of all owners.

5. Except where the board consists of all the owners, the corporation may by resolution at an
   extraordinary general meeting remove any member of the board before the expiration of his
   term of office and appoint another owner in his place to hold office until the next annual general
   meeting.

6. Any casual vacancy on the board may be filled by the remaining members of the board.

7. Except where there is only one owner, a quorum of the board is two where the board con­
   sists of four or less members, three where it consists of five or six members, and four where it
   consists of seven members.

8. At the commencement of each meeting the board shall elect a chairman for the meeting,
   who shall have a casting as well as an original vote, and if any chairman so elected vacates the
   chair during the course of a meeting the board shall choose in his stead another chairman who
   has the same rights of voting.

9. At meetings of the board all matters shall be determined by a simple majority vote.

10. The board may:
    (a) meet together for the conduct of business, adjourn and otherwise regulate its meetings
        as it thinks fit, and it shall meet when any member gives to the other members not less
        than seven days' notice of a meeting proposed by him, specifying the reason for calling
        the meeting;
    (b) employ for and on behalf of the corporation such agents and servants as it thinks fit in
        connection with the control, management and administration of the common proper­
        ty, and the exercise and performance of the powers and duties of the corporation; and
    (c) subject to any restriction imposed or direction given at a general meeting, delegate to
        one or more of its members such of its powers and duties as it thinks fit, and at any
        time revoke such delegation.

11. The board shall:
    (a) keep minutes of its proceedings;
    (b) cause minutes to be kept of general meetings;
    (c) cause proper books of account to be kept in respect of all sums of money received and
        expended by it and the matters in respect of which such receipt and expenditure take
        place;
    (d) prepare proper accounts relating to all moneys of the corporation, and the income and
        all expenditure thereof, for each annual general meeting; and
    (e) on application of an owner or mortgagee or any person authorized in writing by him,
        make the books of account available for inspection at all reasonable times.

12. A general meeting of owners shall be held within three months after registration of the
    condominium plan.
CONDOMINIUM PROPERTY

13. Subsequent general meetings shall be held at least once in each year and not more than fifteen months shall elapse between the date of one annual general meeting and that of the next ensuing annual general meeting.

14. All general meetings other than the annual general meeting shall be called extraordinary general meetings.

15. The board may, whenever it thinks fit, and shall upon a requisition in writing made by the owners representing twenty-five per cent of the total unit factors for the units, convene an extraordinary general meeting.

16. Seven days' notice of every general meeting specifying the place, the date and the hour of meeting and, in case of special business, the general nature of that business, shall be given to all owners and registered first mortgagees who have notified their interests to the corporation but accidental omission to give that notice to any owner or to any registered first mortgagee or non-receipt of that notice by any owner or any first mortgagee does not invalidate any proceedings at any such meeting.

17. All business shall be deemed special that is transacted at an annual general meeting or at an extraordinary general meeting, with the exception of the consideration of accounts and election of members to the board.

18. Except as otherwise provided in these bylaws, no business shall be transacted at any general meeting unless a quorum of persons entitled to vote is present at the time when the meeting proceeds to business, and one-half of the persons entitled to vote present in person or by proxy constitutes a quorum.

19. If within one-half hour from the time appointed for a general meeting a quorum is not present the meeting shall stand adjourned to the corresponding day in the next week at the same place and time and if at the adjourned meeting a quorum is not present within one-half hour from the time appointed for the meeting the persons entitled to vote who are present constitute a quorum.

20. At the commencement of a general meeting a chairman of the meeting shall be elected.

21. At any general meeting a resolution by the vote of the meeting shall be decided on a show of hands unless a poll is demanded by an owner present in person or by proxy, and unless a poll is so demanded a declaration by the chairman that a resolution has on the show of hands been carried is conclusive proof of the fact without proof of the number or proportion of votes recorded in favour of or against such resolution, but a demand for a poll may be withdrawn.

22. A poll, if demanded, shall be taken in such manner as the chairman thinks fit and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

23. In the case of equality in the votes whether on a show of hands or on a poll the chairman of the meeting is entitled to a casting vote in addition to his original vote.

24. On a show of hands each owner shall have one vote; on a poll the votes of owners shall correspond with the unit factors for their respective units.

25. On a show of hands or in a poll votes may be given either personally or by proxy.

26. An instrument appointing a proxy shall be in writing under the hand of the appointer or his attorney, and may be either general or for a particular meeting, but a proxy need not be an owner.

27. Except in cases whereby The Condominium Property Act, a unanimous resolution is required, no owner is entitled to vote at any general meeting until he has paid all contributions payable by him in respect of his unit.

28. Co-owners may vote by proxy jointly appointed by them, and in the absence of such a proxy are entitled to vote on a show of hands, except when the unanimous resolution of owners is required by The Condominium Property Act, but any one co-owner may demand a poll, and on any poll each co-owner is entitled to such part of the vote applicable to a unit as is proportionate to his interest in the unit, and the joint proxy, if any, on a poll has a vote proportionate to the interest in the unit of such of the joint owners as do not vote personally or by individual proxy.

29. Where owners are entitled to successive interests in a unit, the owner entitled to the first interest is alone entitled to vote, whether on a show of hands or a poll, and this bylaw is applicable whether by The Condominium Property Act, the unanimous resolution of owners is required or not.
30. Where an owner is a trustee he shall exercise the voting rights in respect of the unit to the exclusion of persons beneficially interested in the trust, and those persons shall not vote.

31. The corporation shall have a common seal which shall at no time be used except by authority of the board previously given and in the presence of the members of the board or at least two members thereof who shall sign every instrument to which the seal is affixed, but where there is only one member of the corporation his signature is sufficient for the purpose of this clause.

32.—(1) The bylaws in Schedule B of The Condominium Property Act, may be added to, amended or repealed by special resolution of the corporation and not otherwise.

(2) A special resolution means a resolution passed at a general meeting of which at least fourteen days' notice specifying the proposed special resolution has been given by owners representing a majority of not less than three-fourths of the total unit factors for all the lots, and not less than three-fourths of all the owners.

SCHEDULE B.
(Section 20)

1. An owner shall not:
   (a) use his unit for any purpose that may be illegal or contrary to the regulations of the building;
   (b) make undue noise in or about any unit or common property; or
   (c) keep any animals in his unit or the common property after he has received notice in that behalf from the board.

2. Where the purpose for which a unit is intended to be used is shown expressly or by necessary implication or by the registered condominium plan, an owner shall not use or permit his unit to be used for any other purpose.
1980-81
CHAPTER 47

An Act to amend The Condominium Property Act

(Assented to May 19, 1981)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

1. This Act may be cited as The Condominium Property Amendment Act, 1981.

2. The Condominium Property Act is amended in the manner set forth in this Act.

3. The following section is added after section 8:

"8.1 — (1) In this section:

(a) 'apartment' includes a flat or tenement;

(b) 'proprietary lease' means a lease, agreement or arrangement by which a person acquires:

(i) a tenancy, or an extension of an existing tenancy, of residential premises; and

(ii) a direct or indirect ownership interest in residential premises through any agreement, arrangement, scheme or plan including the acquisition of shares of, or a membership interest in, a body corporate, other than a body corporate incorporated or registered under The Co-operative Associations Act, The Co-operative Marketing Associations Act or The Co-operative Production Associations Act;

(c) 'purchase agreement' means an agreement for the sale and purchase of residential premises;

(d) 'residential premises' means:

(i) any premises intended for residential purposes and the land on which the premises are situated; or

(ii) an apartment or the whole or any part of any other place that is or may be occupied by one or more individuals as a residence;

and includes fixtures that, pursuant to the tenancy agreement, are to be supplied by the landlord, but does not include any
other premises used for residential purposes that the Lieutenant Governor in Council may exempt from the operation of this section.

"(2) Where an existing building contains two or more apartments that are:

(a) rented, or have been rented within the previous 12 months, to tenants for residential purposes; and

(b) not included in a condominium plan;

and one or more of the apartments are:

(c) sold under a purchase agreement; or

(d) rented under a proprietary lease;

the purchase agreement or proprietary lease is deemed to be conditional upon the registration, within three months after the date on which the apartment was sold or rented, of a condominium plan that includes the apartments under this Act.

"(3) Any money paid under the purchase agreement or proprietary lease mentioned in subsection (2) is to be held in trust for the purpose for which the money was paid until a condominium plan that includes the apartments is registered under this Act.

"(4) Any person who receives money that is held in trust pursuant to subsection (3) shall immediately deposit that money in a chartered bank, credit union or trust company in a separate account to be held in Saskatchewan and to be designated as a trust account.

"(5) Where a condominium plan is not registered under this Act within three months after the date on which an apartment was sold or rented as described in subsection (2), all moneys required to be held in trust with respect to every such apartment are to be refunded to the person from whom it was received, together with interest at a rate to be prescribed in the regulations.

"(6) Where a person mentioned in subsection (4) fails to refund money as required by subsection (5) within 15 days after a written demand has been made upon him for the money, the failure is prima facie evidence that he has used or applied the money for a purpose other than the purpose for which the money was entrusted to him, and the money is recoverable with costs in a civil action by the person from whom it was received.

"(7) This section does not apply to apartments in an existing building where one or more apartments in the building were, on or before June 30, 1981:

(a) sold under a purchase agreement; or

(b) rented under a proprietary lease".
4. The following clauses are added after clause 49(d):

"(d.1) designating any residential premises that may be exempted from the application of section 8.1;

"(d.2) prescribing a rate of interest for the purposes of section 8.1".

5. This Act comes into force on July 1, 1981.
1983

CHAPTER 74

An Act to amend The Condominium Property Act

(Assented to June 17, 1983)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

1 This Act may be cited as The Condominium Property Amendment Act, 1983.

2 Clause 10.3(1)(e) of The Condominium Property Act is repealed and the following substituted:

"(e) issue to the developer certificates of title to the additional units free and clear of all interests that were endorsed on the certificates of title issued under the condominium plan."