

**CORPORATE HOUSING IN CONDOMINIUMS: RIGHTS, RESPONSIBILITIES AND STRATEGIES FOR CORPORATE HOUSING PROVIDERS IN A COLLECTIVE OWNERSHIP CONTEXT**

**A White Paper prepared for the Corporate Housing Providers Association**

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Blake, Cassels & Graydon LLP

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## **I. INTRODUCTION**

### **A. Vacation Rentals, Corporate Housing, and Condominium Self-Governance**

Corporate housing providers in Canada have been facing an increasingly challenging business and regulatory environment in recent years. This challenging environment is in part the result of a misunderstanding of the corporate housing business model among condominium boards, which conflates corporate housing with temporary or vacation rentals. Largely in response to the increasing use of websites like Airbnb, Canadian condominium properties and their property managers have been erecting barriers and enforcing bylaws against short term vacation rentals. Challenges to corporate housing providers and their operations have been an unfortunate side effect.

Corporate housing is not short term vacation renting or daily business travel. Corporate housing providers are not the same as Airbnb. The distinction, however, is often lost on most, including persons in positions of authority to implement bylaws or rules that restrict or impact corporate housing providers, including members of the Corporate Housing Providers Association (“CHPA”).

Airbnb, as an example, entirely decentralizes the transaction of providing accommodation and has the owner or tenant transact directly with a vacationer, with Airbnb charging a service fee for bringing people together. Service users are brought into new accommodation on short notice for a short period of time (typically a few days to a few weeks at most). Rental properties are almost instantly transformed into hotel accommodation, with strangers coming and going without any accountability to the condominium at all, often at the expense of other tenants and the owners’ senses of security and neighbourhood.

CHPA member companies typically own or rent furnished properties and contract with other companies and individuals to lease, sub-lease or licence properties for periods of two to three months on average. In particular, the corporate housing provider has a long-term presence in the building and a proven track record of accountability to the building and other occupants, including in many cases, ensuring transparency by registering occupants with the applicable concierge. These providers are in complete control of their units and have staff on call to address issues with the user or the property. Corporate housing provided by CHPA member companies should be view as a safe, reliable, accountable, and professional service.

Despite these differences, the crackdown on short term accommodation has often been directed against corporate housing providers. In response, CHPA and Blake, Cassels & Graydon LLP (“**Blakes**”) have prepared this guidance document for CHPA’s members with information on the legislative regimes concerning residential condominium governance, specifically in relation to the operation of corporate housing companies. CHPA and Blakes have also prepared a draft set of sample condominium bylaws that CHPA members may be able to use when entering a new property and negotiating with condominium leadership. These are attached as Schedule B. While most buildings will have bylaws in place, in cases where a new bylaw amendment is proposed to restrict vacation rentals or temporary accommodation in a manner that has an adverse impact on corporate housing providers, we hope these bylaws might help.

Blakes is not retained on behalf of individual members of CHPA. It is not providing the information contained in this paper as legal advice to members of CHPA. Members should not rely on the information found in this White Paper as a substitute for legal advice regarding their own circumstances. Every building has different bylaws and the outcome of any legal dispute will often depend on the particular facts of that case. Members are encouraged to retain their own counsel to provide them with advice and representation generally and in response to legal issues they may be having.

## **B. About CHPA**

CHPA is a professional trade association exclusively dedicated to supporting corporate housing providers around the world. CHPA has more than 300 member companies. CHPA provides its members with services and benefits such as a professional certification program (Certified Corporate Housing Professional), a Professional Code of Ethics, and legislative support to protect the industry.

## **C. Executive Summary and List of Recommendations**

The legal regimes governing Canadian corporate housing providers and condominium boards differ depending on where the property is located. Each Canadian province has its own legislation providing owners, tenants, condominium boards, and other interested parties with

different rights and responsibilities.<sup>1</sup> These rights and responsibilities have been interpreted differently by the courts of each province. Members facing issues with respect to condominium governance are strongly encouraged to consult with a lawyer in the jurisdiction of that property regarding their specific circumstances.

Despite provincial differences, members can take several steps to protect themselves and operate successfully in a condominium property:

**1. Do Your Diligence:**

Before entering into a new property, check the property's statutory declaration, any disclosure statements, and the condominium's current bylaws, all of which could provide crucial information on restrictions in that community. Conducting a litigation search on the condominium corporation to evaluate any disputes, if any, is also helpful.

**2. Make Relationships with the Board and the Property Manager:**

Building a strong relationship with the condominium board or council and property manager is invaluable and can forestall complaints and enforcement action by the corporation.

**3. Know Your Rights – Procedural and Substantive:**

Condominium legislation is designed to balance the rights of individual owners and tenants with the rights of the majority, as expressed through the council. While council has the general power to pass bylaws, there are limits that vary from province to province. For example, minority owners have the ability to bring proceedings against the council for oppressive actions.

**4. Consider Compromise and Negotiated Solutions:**

Court action is not the preferred solution to restrictive bylaws or rules. The condominium corporation has numerous powers and will receive the benefit of the doubt when a court is considering its administrative decisions. Compromising to preserve operations in a building can be worthwhile. Concessions might include agreeing to minimum rental periods where feasible or guest registration with the council and property manager (as one way to distinguish corporate housing from Airbnb).

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<sup>1</sup> This paper was prepared with specific reference to legislation in British Columbia, Alberta, and Ontario. It is important to review specific provincial legislation and not rely solely on the general content contained in this document.

## II. CONDOMINIUM LEGISLATION IN CANADA

This White Paper does not provide a comprehensive review of the legislation governing condominium relationships in each province. Instead, it discusses some commonalities between provinces and focuses on the specific issues facing corporate housing providers in British Columbia, Alberta and Ontario<sup>2</sup> as a result of actions taken by corporations and councils in relation to corporate or short term housing.

### A. Legislative Framework Generally

It is important to remember the basic structure of a condominium or, as in British Columbia, a “strata”,<sup>3</sup> when considering the rules governing the administration of a condominium property. The word “condominium” or “strata” describes a system of property ownership and its administration. Properties such as apartments or townhouses are often brought under a condominium or strata ownership structure because there are more than insignificant common areas (roofs, elevators, stairs, gardens, amenities, roadways, walks, court yards and so on). Units are individually owned and the common elements are owned by the unit owners collectively.<sup>4</sup>

Condominium legislation provides for guidelines and rules for the development of condominium properties and the governance of the building and its common property. It allows the majority, through the corporation and its bylaws, to control the administration and management of the property without every action being an infringement on the unit owner’s private property rights.<sup>5</sup> Bylaws are enacted by the corporation and amended from time to time by the council. They are the means by which condominium corporations and their councils have been affecting corporate housing providers’ operations.

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<sup>2</sup> *Strata Property Act*, S.B.C. 1998, c. 43 [SPA]; *Condominium Act*, 1998, S.O., c. 19 [*Condominium Act (Ont.)*]; *Condominium Property Act*, R.S.A. 2000, c. C-22 [*CPA (Alta.)*].

<sup>3</sup> A note on terminology. The terms “condominium”, “condominium property” or “strata plan” refer to property – the land and buildings – created under the condominium legislation. The terms “corporation” or “condominium corporation” or “strata corporation” all refer to the corporations created by condominium legislation in each province to oversee and manage the “condominium” or “strata plan”: Marko Djurdjevac, *Halsbury’s Laws of Canada: Condominiums*, 1<sup>st</sup> Ed. (Lexis Nexis, Markham Ont., 2015), p. 132 [Djurdjevac].

<sup>4</sup> Djurdjevac, p. 129.

<sup>5</sup> Djurdjevac, p. 131.

Each province in Canada has its own legislative scheme, and the specific provisions, requirements, and terminology vary from province to province, but there are a number of common features between them:

**1. Balancing individual and collective interests.** Condominium legislation across Canada attempts to balance the interests of individual owners and tenants with the collective interests of the majority acting through the corporation and council. Owners are required, at times, to give up a degree of control over common property and their units for the benefit of common ownership. These restrictions and rules are set out in the founding documents of a condominium (the declaration or plan) and the bylaws or rules enacted by the corporation.<sup>6</sup>

**2. Consumer Protection.** Condominium legislation protects consumers (i.e. owners and tenants) by obligating developers and corporations to provide adequate disclosure on unit holder rights and restrictions, which provides predictability and certainty to those involved in condominium developments. Legislation also provides owners and tenants with remedies and procedural protections to resist the actions of a corporation or council. A primary example common to all condominium legislation is the oppression remedy. This allows owners (and, in some cases, tenants) to bring court proceedings against a corporation if its actions are unfair or unduly burdensome. Courts have broad powers to craft just and equitable remedies in response, considering the majority's interest in corporate governance and the public's interest in consumer protection.<sup>7</sup>

**3. Judicial Deference.** It often falls to corporations and their councils, rather than the legislation, to balance individual and majority interests and protect consumers through the administration of bylaws. Although parties have recourse to the oppression remedy, courts apply some deference to the majority's decisions.<sup>8</sup> Deference, however, is not unlimited.

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<sup>6</sup> Djurdjevac, p. 130; "Report on Strata Property Law: Phase One", British Columbia Law Institute Report, No. 70, November 2012, p. 10; *Norenger Development (Canada) Inc. v. The Owners Strata Plan NW 3271*, 2016 BCCA 116; *45931 B.C. Ltd. v Strata Plan BCS1589*, 2012 BCCA 44 [*45931 B.C. Ltd.*]; *Baker v. The Owners, Strata Plan NW3304*, 2002 BCSC 1559; *2475813 Nova Scotia Ltd. v. Rodgers*, 2001 NSCA 12; *Westmorland County Condominium Corporation No. 29 v. Estabrooks*, 2012 NBCA 26; *Whitehorse Condominium Corp. No. 95 v. 37724 Yukon Inc.*, 2014 YKSC 2 [*Whitehorse Condominium*].

<sup>7</sup> *The Owners, Strata Plan NES 97 v. Timberline Developments Ltd.*, 2011 BCCA 421; Djurdjevac, p. 133.

<sup>8</sup> *Gentis v. The Owners, Strata Plan VR 368*, 2003 BCSC 120; *934859 Alberta Inc. v. Condominium Corporation No. 0312180*, 2007 ABQB 640; *Muskoka Condominium Corporation No. 39 v. Kreutzweiser*, 2010 ONSC 2463; *Whitehorse Condominium*.

## **B. Development of the Condominium: Declarations, Descriptions or Plans and Disclosure Statements**

Depending on the province, developers of condominium property are required to prepare and register declarations or plans at the Land Title Office respecting the details of the condominium property to be developed. Generally these are technical documents containing, among other things, basic information about the condominium property.<sup>9</sup> In Ontario, declarations must contain a description of any exclusive-use common elements, and the proportions of ownership interests and contributions toward the common expenses. In addition, some declarations may include conditions and restrictions on the use of the units and common elements.<sup>10</sup>

Once a plan or declaration is deposited, the condominium corporation is created.

Developers in Ontario and British Columbia must prepare much more comprehensive disclosure statements for new condominium developments. These provide an essential catalogue of information on the nature of a condominium property. In general, they contain, among other things:

- information on the developer;
- information on the development, including a description of the property and its layout, legal descriptions, existing encumbrances and legal notations, proposed encumbrances, outstanding and contingent liabilities and litigation and environmental matters;
- a description of the property's permitted uses pursuant to city zoning bylaws, the usage of units of the property, building restrictions, and occupancy restrictions; and
- information on the condominium, including individual unit entitlements, voting rights, common property and shared facilities, information on the bylaws of the condominium to be adopted at the outset of the development, and so on.<sup>11</sup>

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<sup>9</sup> SPA, ss. 244-245; *Condominium Act (Ont.)*, s. 7(1); *CPA (Alta.)*, s. 8; *Condominium Property Regulation*, AR168/2000 [CP Reg].

<sup>10</sup> *Condominium Act (Ont.)*, s. 7(1);

<sup>11</sup> *Condominium Act (Ont.)*, s. 72; *Real Estate Development Marketing Act*, S.B.C. 2004, c. 41.

In Alberta, if a condominium property is to be developed in phases, a phased development disclosure statement must be registered as part of the condominium plan. Some of the information included in the disclosure statement would be:

- a statement that the building or land is to be developed in phases;
- the maximum and minimum number of units in the entire project;
- a description of the units and common property included in the initial phase and subsequent phases;
- a description of the proposed physical appearance of each phase and its compatibility with other phases; and
- other information on contributions to common expenses, and administrative costs by the developer and owners.<sup>12</sup>

After a development is completed and a condominium corporation is set up, elements of these statements, such as the governing bylaws, are subject to change. Declarations, plans and disclosure statements provide an important set of information to assess a property, but reference must always be made to the current bylaws and other publically available information, including city bylaws.

### **C. The Corporation and the Council**

Once the condominium corporation is created, it manages the property for the owners in much the same way as a business corporation operates on behalf of its shareholders. Corporations have extensive duties under condominium legislation. In general, the corporation's responsibilities involve managing and maintaining the common property and assets, keeping and maintaining appropriate records, and administering or enforcing the bylaws or rules.<sup>13</sup>

The corporation is directed by an elected executive council of owners. This council is responsible for carrying out and managing the corporation's duties and affairs.<sup>14</sup> Whenever a

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<sup>12</sup> *CP Reg*, s. 35.

<sup>13</sup> *SPA*, s. 3; *Condominium Act (Ont.)*, s. 17; *CPA (Alta.)*, s. 37.

<sup>14</sup> *SPA*, s. 26; *Condominium Act (Ont.)*, s. 27(1); *CPA (Alta.)*, s. 28(7).

power is assigned to the corporation, it is usually the council that carries it out, unless the condominium legislation or the corporation's bylaws require a vote by eligible voters.

#### **D. Bylaws of the Corporation**

Condominium corporations must have bylaws. These serve as the basic laws and values underpinning the small community making up the condominium. Owners and tenants are subject to the bylaws and the corporation is responsible for enforcing them.<sup>15</sup>

Bylaws can govern many aspects of the corporation, including regulating the use of common property and how owners and tenants are to carry out their affairs in relation to their units and the condominium generally.<sup>16</sup> More importantly for corporate housing providers, bylaws may regulate how an owner or a tenant may use their unit. This power, however, is not unlimited. The power is expressly and impliedly restricted by condominium legislation.<sup>17</sup>

In Ontario, any bylaws of the condominium corporation must be consistent with the declaration and the *Ontario Condominium Act*.<sup>18</sup> For this reason, some condominium corporations amend the declaration once the corporation and first board is established to include restrictions on uses and length of time a person is permitted to stay.<sup>19</sup>

#### **E. Dispute Resolution and Judicial Supervision**

In its role administering the bylaws, the council serves as both prosecutor and judge when there is an infringement by an owner or tenant. Under some condominium statutes, those accused of violating bylaws are expressly entitled to basic procedural fairness, such as notice of the allegation and a chance to request a hearing to make submissions in defence.<sup>20</sup> As mentioned above, an owner or tenant can challenge a decision they feel is unfair through proceedings in

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<sup>15</sup> *Condominium Act (Ont.)*, s. 17(3); *SPA*, ss. 129-134; *CPA (Alta.)*, ss. 32, 35.

<sup>16</sup> *SPA*, s. 119(2); *Condominium Act (Ont.)*, s. 56(1); *CPA (Alta.)*, s. 32(1).

<sup>17</sup> *SPA*, s. 121; *Condominium Act (Ont.)*, s. 56 (6),(8); *CPA (Alta.)*, s. 32(5), (7).

<sup>18</sup> *Condominium Act (Ont.)*, s. 56(1).

<sup>19</sup> The corporation may only amend the declaration pursuant to s. 107 of the *Condominium Act*. Note, in order to make changes respecting exclusive-use common elements, maintenance or repair obligations, the proportions of ownership interests, or the proportions of contributions toward the common expenses, the *Condominium Act* requires the consent of 90% of the owners in the condominium. All other changes to the declaration require consent of eighty per cent 80% of the owners in the condominium: s. 107(2).

<sup>20</sup> *SPA*, s. 134-135.

court.<sup>21</sup> Owners and tenants can also challenge specific bylaws violating the condominium legislation.

### **III. CHALLENGES IN DEALING WITH CONDOMINIUM SELF-GOVERNMENT**

As described in the previous section, condominium corporations and their councils have considerable power to impact the property and daily lives of unit owners and tenants.

Unfortunately for corporate housing providers, the will of the majority, exercised through the council and thus the corporation, can be turned against a minority or an individual owner or tenant. Owners might complain about the operations of corporate housing providers, associating them with short term rental providers, such as Airbnb. In response, the council may take a hostile approach to non-traditional unit uses (e.g. rentals for non-indefinite periods of time) and enact or enforce bylaws negatively impacting corporate housing providers. Enforcement involves fines and potentially court proceedings.

#### **A. Types of Bylaws Affecting Corporate Housing Providers**

Condominium corporations have utilized numerous types of bylaws against corporate housing providers.

##### **1. Complete Prohibitions**

Condominium corporations may enact bylaws with broad language that attempt to generally prohibit corporate housing and other temporary (i.e. not permanent or indefinite) uses. This type of bylaw attempts to restrict short term rentals, licensing and similar categories of use other than indefinite leasing:

A condominium unit must not be used for short-term accommodation purposes, such as a bed and breakfast, lodging house, hotel, home exchange, time share or vacation rental. Without limiting the generality of the foregoing, a resident must not enter into a licence for the use of all or part of a unit.

In this example, the word “used” is deliberately employed. Condominium legislation prevents corporations from restricting the owners’ property rights to sell or otherwise deal with their properties. Legislation also restricts the types of bylaws that may be enacted to prevent owners

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<sup>21</sup> SPA, s. 164; *Condominium Act (Ont.)*, s. 135; *CPA (Alta.)*, s. 67.

from leasing their units. Regulating “use”, however, is a subject to which legislatures and courts in some Canadian provinces have generally taken a hands-off approach.

Another bylaw that is an attempt to create a complete prohibition is one forbidding owners and tenants from operating any kind of business out of a unit:

An owner, tenant, or visitor shall not operate any business in a condominium unit for commercial or professional purposes, except a home office involving only administrative business.

Corporations may complain that corporate housing providers are using units to operate businesses. Again, condominium corporations are misunderstanding what corporate housing is. The unit is being used for housing, most often by people that live in the province or are travelling for work for an extended period of time. They are not running a business in the unit; they are living in it just like any traditional occupant that might be residing in a unit under a longer term lease. The corporate housing business operates from an office located elsewhere, through employees and on the internet.

## **2. Time Restrictions**

A frequent complaint regarding short-term vacation rental services like Airbnb is disruption caused by transient residents. The suggestion is that community is diminished and other owners, rightly or wrongly, feel less secure. Councils sometimes address this issue by imposing a minimum period of use by owners and tenants:

An owner, tenant, or occupant shall not permit a unit to be occupied under a lease, sublease, contract, license or any other commercial arrangement for periods of less than 180 days.

This bylaw is broadly drafted to encompass all types of relationships between owner or tenant and the ultimate user of the property.

However, time restriction bylaws are more targeted than general prohibitions and are somewhat preferable. Corporate housing providers can continue business as long as they rent for periods of time longer than the minimum or can take advantage of other bylaws or laws that would permit them to continue to operate notwithstanding the stated minimum. The obvious difficulty is consistently finding long term users. Not every customer requires a six or eight month stay.

### **3. Compliance with the Law, including City Bylaws**

In some jurisdictions, when a condominium corporation is created by the deposit of a plan or declaration, the condominium corporation receives a standard set of bylaws. These apply unless the condominium corporation, through its voting members, amends them. These bylaws contain general language restricting the ability of an owner to use the unit or the common property or assets in a manner that is illegal. For example, British Columbia's standard bylaws provide:

- 3 (1) An owner, tenant, occupant or visitor must not use a strata lot, the common property or common assets in a way that
- (a) causes a nuisance or hazard to another person;
  - (b) causes unreasonable noise,
  - (c) unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets or another strata lot,
  - (d) is illegal, or
  - (e) is contrary to a purpose for which the strata lot or common property is intended as shown expressly or by necessary implication on or by the strata plan.

A corporation may add to this restriction by providing that owners, tenants, occupants or visitors may not use a property in a way that

is illegal, is contrary to any provisions, rules, or ordinances or any government statute, municipal bylaws or rules or is damaging to the reputation of the corporation or its residents.

Corporations may rely on this language to impose fines on corporate housing providers and, eventually, stop the use of the property for corporate housing altogether. For example, a city bylaw may prohibit short term accommodations in properties zoned for residential uses. The corporation will argue that the owner and tenant are in violation of the city bylaw and, therefore, the corporation's bylaws.

### **4. Move-in-Move-Out Rules and User Registration**

In addition to bylaws targeting the operations of corporate housing providers, there are generic bylaws that may be used against corporate housing providers. A bylaw might impose requirements on moving in and out of a building. These often include a requirement that an

appointment be made, restrictions on the days and times moves may occur, and the obligation to pay a non-refundable fee.

The typical corporate housing customer/licensee will not have large items to move in or out, nor will they require any special attention for a move. Based on this, rules or bylaws applying to moving in and out of the building should probably not apply to most corporate housing customers. Nevertheless, when a new occupant (tenant, subtenant or occupant) or the corporate housing provider fails to comply with move-in and move-out rules, the corporation may attempt to issue a notice of infraction and fine the owner or tenant housing provider.

Another rule that is awkwardly applied against the guests of corporate housing providers is that requiring new tenants to register with the corporation (providing name, number and contact information). This is despite the fact that in most corporate housing arrangements, the tenant remains the corporate housing provider when the new guest arrives.

Finally, some condominium boards have bylaws which require a fee to be paid on every occasion the occupant of a unit changes. These bylaws often can constitute a means to unfairly target corporate housing providers, and may be selectively enforced by the condominium board.

## **B. Enforcement Proceedings**

Condominium corporations are empowered generally under condominium legislation to enforce compliance with the condominium legislation, bylaws, and in some jurisdictions, other rules. The specific powers vary from province to province. Bylaws may provide for fines and other monetary penalties in the case of non-compliance. If fines are ineffective, corporations (and other parties) can apply to court for orders for compliance and the payment of fines.<sup>22</sup>

## **IV. MANAGING CONDOMINIUM CORPORATION ISSUES**

There are a number of approaches to dealing with condominium corporations, councils and property managers who are attempting to enforce condominium bylaws against corporate housing providers. Distinguishing between the corporate housing model and Airbnb model is crucial. In many cases, reminding councils of the institutional protections, organization, and

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<sup>22</sup> SPA, ss. 129-134, 173; CPA (*Alta.*), ss. 35-36.

professionalism offered by corporate housing providers can resolve issues, or at least begin a conversation on compromise. Negotiation is the most cost-effective way to resolve a dispute.

#### **A. Do Your Diligence**

It is important to obtain all available information in the public realm about the development and administration of a particular condominium before entering into the property. This requires obtaining:

- the statutory declaration or plan;
- the real estate disclosure statement made by the developer;
- the current and historical bylaws of the condominium; and
- a litigation search of the condominium corporation, which will demonstrate the number and the types of claims brought and defended by the condominium in its history.

Beyond examining documents related to the corporation and the property, corporate housing providers should meet the members of the board face-to-face and any property managers and explain the housing provider's intentions and how corporate housing works. Taking steps to research a condominium property and establish a pre-occupancy relationship with the council and its property manager will help determine whether there are existing restrictions on non-indefinite occupation, and whether the condominium's elected leadership could be hostile to corporate housing providers.

All of the building and corporate information (declaration, bylaws, rules and general building information) should be made available in the unit for the occupant's information. Guests and occupants must be directed to these rules and regulations upon arrival. In some cases, it may make sense to provide the property manager or the board with a signed statement from the occupants that they have been provided with the building's rules and regulations and will agree to follow them as with any other owner, tenant or occupant.

#### **B. Reach out to the Condominium Council and the Property Manager**

Engagement with the council and its property manager should not end once a corporate housing provider is "resident" in a condominium. Complaints against the corporate housing provider should be addressed immediately. A representative should be sent to each annual

general meeting of the council and any other meetings open to interested parties and non-council members. Proactive attendance allows corporate housing providers to suggest compromise bylaws that are more targeted to the specific harm concerning the council or individual members. While this level of engagement requires considerable resources, it is cheaper and easier than court-based dispute resolution or alternative dispute resolution.

### **C. Know Your Rights**

Lastly, as an owner or tenant, it is important to know that corporate housing providers have statutory protections and remedies available to them under condominium legislation. The following is an overview of some of the main legislative tools available to owners and tenants in British Columbia, Alberta, and Ontario.

#### **1. Legal Restrictions on Bylaws**

Generally, bylaws restricting the freedom of owners and tenants will be strictly construed and cannot restrict reasonable activities unless clearly stated. Bylaw restrictions on freedom will not be extended by mere implication.<sup>23</sup>

There are statutory restrictions on the power to pass and enforce bylaws. Condominium corporations cannot pass bylaws restricting an owner's ability to sell, mortgage or otherwise deal with their unit. For example, section 32(5) of Alberta's *Condominium Act* bars condominium corporations from prohibiting or restricting "any transfer, lease, mortgage or other dealing" with units.<sup>24</sup> Judicial decisions from Alberta have interpreted this provision widely and absolutely. At the same time, courts in Alberta have interpreted condominium corporations' powers narrowly.<sup>25</sup> While it has not been tested in Alberta, this language may prohibit bylaws that restrict rentals or licencing by corporate housing providers.

British Columbia's *Strata Property Act* contains a similar provision, which states that a bylaw will "not be enforceable to the extent it [...] (c) prohibits or restricts the right of an owner of a strata lot to freely sell, lease, mortgage or otherwise dispose of the strata lot or an interest in the strata

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<sup>23</sup> *Harvey v. The Owners, Strata Plan NW 2489*, 2003 BCSC 1316; *Lee Men International Enterprises Co. v. Siegle Properties BC Ltd.*, 2007 BCSC 1128.

<sup>24</sup> *CPA (Alta.)*, ss. 32(5).

<sup>25</sup> *Bank of Montreal v. Bala*, 2015 ABQB 166; *Condominium Corp. No. 0312235 v. Scott*, 2015 ABQB 171; *Devlin v. Condominium Plan No. 9612647*, 2002 ABQB 358.

lot.”<sup>26</sup> Rental restrictions are permitted, but only if they comply with the legislation: restrictions must be absolute, time-based, or quantity-based with an administrative process to govern which units are able to be rented.<sup>27</sup> Arguably, restrictions in British Columbia going beyond these limits are outside a strata corporation’s powers and are potentially invalid.

The British Columbia *Strata Property Act* also contains a “grandfathering” provision in relation to rental restrictions. Section 143(1) of the *Strata Property Act* states that a bylaw that is passed prohibiting or limiting rentals does not apply to a strata lot until the later of (a) one year after a tenant who is occupying the strata lot at the time the bylaw is passed ceases to occupy it as a tenant, and (b) one year after the bylaw is passed. In other words, if a strata corporation imposes a rental restriction, then tenancies predating it are exempt.<sup>28</sup> This is an example of consumer protection. Although no decision considers this provision’s application to corporate housing providers with licensing arrangements, it is a defensible point to raise when a corporate housing provider has a long-standing tenancy and is faced with an adverse new bylaw purporting to restrict rentals or licences by the corporate housing provider.

Generally, bylaws must also be reasonable and not contrary to the condominium legislation or any regulation passed under that legislation or any other enactment or law.<sup>29</sup> Courts may apply some deference to the decisions of condominium councils, which means a court may not second-guess a good faith policy decision by a condominium board. However, arbitrary and clearly unreasonable bylaws will not be enforced. For example, a bylaw charging a move-in and move-out fee will be struck down if it is clearly unreasonable.<sup>30</sup>

Despite this requirement, councils have wide latitude to pass bylaws. Of the three jurisdictions described in this report, Ontario is the most permissive. Under Ontario’s *Condominium Act*, bylaws and the rules of the condominium corporation must be “reasonable” and consistent with

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<sup>26</sup> SPA, s. 121.

<sup>27</sup> SPA, ss. 121, 141-144; *Mathews v. The Owners, Strata Plan VR 90*, 2016 BCCA 345.

<sup>28</sup> SPA, s. 143.

<sup>29</sup> SPA, s. 121; *Condominium Act (Ont.)*, s. 56(6),(8); *CPA (Alta.)*, s. 32(5), (7); In Ontario, the requirement for bylaws to be reasonable is expressly set out in the legislation. In other provinces it is (arguably) implied.

<sup>30</sup> *The Owners, Strata Plan LMS 3883 v. De Vuyst*, 2011 BCSC 1252; Section 110 of the SPA prohibits the imposition of user fees for the use of common property other than as set out in the *Strata Property Regulation*, B.C. Reg. 312/2009. The exception to s. 110 is found in s. 6.9 of the Regulation, which provides that fees must be reasonable.

the *Condominium Act* and the declaration creating the condominium. Ontario courts have repeatedly upheld use restriction rules prohibiting short term accommodation services.<sup>31</sup>

For example, in *Metropolitan Toronto Condominium Corp. No. 1170 v. Zeidan*,<sup>32</sup> a condominium corporation applied to the Ontario courts for an order preventing other unit holders from renting out units for short term accommodation purposes. The condominium corporation had passed a rule prohibiting persons from using units for less than three months. The corporation argued that the short-term uses by non-resident owners were commercial and violated the three-month rule, as well as the condominium declaration and a City bylaw requiring that the units be used as residential dwelling units. The court agreed, finding that the restriction on short term accommodation was a valid rule and that it was enacted to address legitimate security concerns within the condominium.

As a result, at least in Ontario, it will likely be an uphill battle to directly challenge restrictive bylaws.

## **2. Procedural Rights**

In most jurisdictions, the law obligates condominium councils to treat all owners, tenants and occupants fairly in applying and enforcing bylaws. In British Columbia, this is set out in the *Strata Property Act*. For the contravention of a bylaw or other rule, the strata corporation must not impose a fine, require a person to pay the costs of remedying the contravention, or deny a person the use of a recreational facility unless the strata corporation has:

1. received a complaint about the contravention,
2. given the owner or tenant the particulars of the complaint, in writing, and a reasonable opportunity to answer the complaint, including a hearing if requested by the owner or tenant, and

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<sup>31</sup> *Metropolitan Toronto Condominium Corp. No. 1170 v. Zeidan*, [2001] O.J. No. 2785 (Sup. Ct. J.) [Zeidan]; *Skyline Executive Properties Inc. v. Metro Toronto Condominium Corp. No. 1280*, [2001] O.J. No. 3512 (Sup. Ct. J.); *Apartments International Inc. v. Metropolitan Toronto Condominium Corp. No. 1170*, [2002] O.J. No. 3821 (Sup. Ct. J.), affirmed, [2003] O.J. No. 1250 (C.A.); *Skyline Executive Properties Inc. v. Metropolitan Toronto Condominium Corp. No. 1385*, [2002] O.J. No. 5117 (Sup. Ct. J.), affirmed [2003] O.J. No. 5116 (C.A.).

<sup>32</sup> *Zeidan*.

3. if the person is a tenant, given notice of the complaint to the person's landlord and to the owner.<sup>33</sup>

Upon receiving an infraction complaint, a corporation should normally provide notice of the particulars to the person along with information on their opportunity to be heard by the council. A council might combine steps by sending notice of the infraction along with the decision of the council. Arguably, this violates the requirement to provide particulars and gives the appearance that council has made up its mind. A court can strike down an infraction and fine if it determines the owner or tenant has not been afforded basic procedural fairness rights.<sup>34</sup>

In Alberta and Ontario, procedural fairness rights are not expressly set out in legislation. However, this does not mean there is no requirement for procedural fairness. It means that parties must seek relief for unfair actions by a corporation—including procedural unfairness—through the statutory oppression remedy.<sup>35</sup>

### **3. The Oppression Remedy**

The statutory oppression remedy is a significant tool available in all jurisdictions to condominium property owners and, in some jurisdictions, to tenants. The definition of oppression differs by province, but it generally includes conduct that is oppressive or unfairly prejudicial to the owner, tenant, or certain other parties, or that unfairly disregards their interests.<sup>36</sup>

In general, there is a two part test to determine whether a condominium corporation acted oppressively or significantly unfairly. First, there must be evidence that the applicant's reasonable expectations were breached. Second, there must be evidence that establishes the breach was oppressive or significantly unfair.<sup>37</sup> Courts usually consider the following factors, among others:

- whether the party claiming oppression was made aware of the bylaw or restriction or obligation when they entered the property;

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<sup>33</sup> SPA, s. 135.

<sup>34</sup> *McLachlan v. Burrard Yacht Club*, 2008 BCCA 271; *Condominium Corporation No 072 9313 (Trails of Mill Creek) v Schultz*, 2016 ABQB 338 [Schultz].

<sup>35</sup> *Schultz, Couture v. Toronto Standard Condominium Corp. No. 2187*, 2015 ONSC 7596.

<sup>36</sup> SPA, s. 164; *Condominium Act (Ont.)*, s. 135; *CPA (Alta.)*, s. 67.

<sup>37</sup> *3716724 Canada Inc. v. Carleton Condominium*, 2016 ONCA 650; *45931 B.C. Ltd; Schultz*.

- whether the conduct was cumulative or a single example of bad behaviour;
- whether the conduct complained of came about as a result of a majority vote;
- whether the particular policy was in place from the beginning of the corporation and whether it targeted this particular party; and
- whether the party complaining of oppression was provided with adequate notice of the policy and was given an opportunity to be heard by the council and whether the council provided reasons for its decision.<sup>38</sup>

It is important to note that in Ontario, owners, the condominium corporation, a declarant or a mortgagee may apply to a court to seek relief pursuant to the oppression remedy. In Alberta, an “interested party” has recourse to the oppression remedy. As defined in the Act, this means an “owner, a corporation, a member of the board, a registered mortgagee or any other person who has a registered interest in a unit”. In British Columbia, an owner or tenant may bring an oppression proceeding under the *Strata Property Act*.<sup>39</sup>

#### 4. Other Remedies

In most jurisdictions, the corporation and certain other parties may apply to have the court appoint an administrator to assume the condominium corporation’s role if it is in the best interest of the owners.<sup>40</sup> This remedy may be available where there are serious issues with mismanagement and operation of a condominium corporation.<sup>41</sup> Remedies of this kind may

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<sup>38</sup> Djurdjevac, 391-392.

<sup>39</sup> *SPA*, s. 164; *Condominium Act (Ont.)*, s. 135; *CPA (Alta.)*, s. 67.

<sup>40</sup> *SPA*, s. 174; *Condominium Act (Ont.)*, s. 131; *CPA (Alta.)*, s. 58.

<sup>41</sup> In the case of *Lum v. Strata Plan VR 519*, [2001] B.C.J. No. 493, the B.C. Supreme Court set out factors for judges to consider when deciding whether to exercise their discretion to appoint an administrator. The factors to consider include:

- a. whether there has been established a demonstrated inability to manage the strata corporation;
- b. whether there has been demonstrated substantial misconduct or mismanagement or both in relation to affairs of the strata corporation;
- c. whether the appointment of an administrator is necessary to bring order to the affairs of the strata corporation;
- d. where there is a struggle within the strata corporation among competing groups such as to impede or prevent proper governance of the strata corporation;
- e. where only the appointment of an administrator has any reasonable prospect of bringing to order the affairs of the strata corporation.

have limited applicability for corporate housing providers as they typically arises in drawn-out disputes between feuding factions of permanent owners.

## **5. A Note on Forum**

An oppression claim means going to court. However, there are other venues in which to challenge a condominium corporation's actions; in some cases these are mandatory. For example, parties in Ontario must submit condominium disputes to mandatory mediation and arbitration. Mediation and arbitration is intended to occur before any application to court for an order requiring compliance with a condominium declaration, bylaw or rule. However, parties are not precluded from seeking relief from oppression as an alternative to mediation and arbitration. In Alberta, there are no restrictions in the legislation requiring condominium disputes to be resolved through arbitration, though that is always an option for parties. Arbitration is optional in most other provinces.<sup>42</sup>

British Columbia has also recently installed a new online Civil Dispute Resolution Tribunal ("CDRT") as the primary venue for strata disputes involving, among other things, unfair actions by the strata corporation or by people owning more than half of the strata lots, arbitrary enforcement or non-enforcement of strata bylaws, and interpretation of the legislation, regulations or bylaws. While it is not mandatory, there are processes to have strata disputes sent to the CDRT when they can be handled without serious unfairness.<sup>43</sup>

## **V. CONCLUSION**

The unfortunate reality of corporate housing in Canada today means operating in an environment of misunderstanding and consequential potential hostility. To fight against preconceived notions relating to associating corporate housing with Airbnb or traditional vacation rentals, corporate housing providers must make every effort to educate themselves on the applicable legislative regime in their jurisdiction governing condominiums and the balance between condominium boards and the occupants. Disputes with boards can happen even where a housing provider has done everything right. Housing providers must take steps to get in front of the board and educate them and all occupants about the provider's operations in a way

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<sup>42</sup> SPA, s. 177; *Condominium Act (Ont.)*, s. 132; *CPA (Alta.)*, s. 69.

<sup>43</sup> *Civil Dispute Resolution Tribunal Act*, S.B.C. 2012, c. 25, ss. 2-3, 6.

to accommodate any issues they may have and to avoid misunderstandings that can create significant and long term legal battles.

**Schedule A - Relevant Sections Of Condominium Legislation  
In British Columbia, Alberta And Ontario**

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## **BRITISH COLUMBIA**

### ***Civil Dispute Resolution Tribunal Act, S.B.C. 2012, c. 25***

#### **Part 1 — Definitions and Tribunal Mandate**

##### **Civil Resolution Tribunal mandate and role**

**2** (1) The Civil Resolution Tribunal is established, consisting of the chair and other tribunal members appointed in accordance with this Act.

(2) The mandate of the tribunal is to provide dispute resolution services in relation to matters that are within its authority, in a manner that

(a) is accessible, speedy, economical, informal and flexible,

(b) applies principles of law and fairness, and recognizes any relationships between parties to a dispute that will likely continue after the tribunal proceeding is concluded,

(c) uses electronic communication tools to facilitate resolution of disputes brought to the tribunal, and

(d) accommodates, so far as the tribunal considers reasonably practicable, the diversity of circumstances of the persons using the services of the tribunal.

(3) In fulfilling its mandate, the role of the tribunal is

(a) to encourage the resolution of disputes by agreement between the parties, and

(b) if resolution by agreement is not reached, to resolve the dispute by deciding the claims brought to the tribunal by the parties.

(4) In addition to its responsibilities in relation to disputes brought to the tribunal for resolution, the tribunal may

(a) provide the public with information on dispute resolution processes generally, and

(b) make its online dispute resolution services available to the public generally.

#### **Division 2 — Strata Property Claims**

##### **Strata property claims within jurisdiction of tribunal**

**3.6** (1) Subject to subsections (2) and (3) and section 48.1 [orders available in strata property claims], the tribunal has jurisdiction over a claim concerning one or more of the following:

(a) the interpretation or application of the Strata Property Act or a regulation, bylaw or rule under that Act;

(b) the common property or common assets of the strata corporation;

(c) the use or enjoyment of a strata lot;

(d) money owing, including money owing as a fine, under the Strata Property Act or a regulation, bylaw or rule under that Act;

(e) an action or threatened action by the strata corporation, including the council, in relation to an owner or tenant;

(f) a decision of the strata corporation, including the council, in relation to an owner or tenant;

(g) the exercise of voting rights by a person who holds 50% or more of the votes, including proxies, at an annual or special general meeting.

(2) The tribunal does not have jurisdiction in relation to a claim that may be dealt with, by the Supreme Court, under any of the following provisions of the Strata Property Act:

(a) section 33 [accountability];

(b) section 52 [unanimous votes];

(c) section 58 [court appointed voter];

(d) section 89 [removal of claim of lien after purchase from owner developer];

(e) section 90 [removal of liens and other charges];

(f) section 117 [forced sale of owner's strata lot to collect money owing];

(g) section 160 [court orders respecting rebuilding damaged property];

(h) section 173 (2) [court order when special levy resolution receives more than 1/2 but less than 3/4 of votes];

(i) section 174 [appointment of administrator for strata corporation];

(j) section 208 [orders respecting requests from leasehold landlords];

(k) section 209 [leasehold landlord's remedies on leasehold tenant's default];

(l) section 226 (1) (c) and (d) [release of security for common facilities];

(m) section 232 [amendment of declaration to extend time for election];

(n) section 233 [other amendments respecting Phased Strata Plan Declaration];

(o) section 235 [orders if owner developer elects not to proceed with next phase];

(p) section 236 [order to compel completion of a phase];

(q) section 246 [order for amendment of Schedule of Unit Entitlement];

(r) section 272 [vote to cancel strata plan];

(r.1) section 273.1 [confirmation by court];

(r.2) section 278.1 [confirmation by court];

(s) section 279 [order vesting authority in liquidator];

(t) section 284 [application for court order to wind up strata corporation].

(3) The tribunal does not have jurisdiction in relation to any of the following:

(a) a claim to which Part 5 [Resolving Disputes] of the Residential Tenancy Act applies;

(b) a claim to which all parties have agreed that the Arbitration Act will apply;

(c) a claim prescribed by regulation as being excluded from the jurisdiction of the tribunal.

## ***Strata Property Act, S.B.C. 1998, c. 43***

### **Part 2 — The Strata Corporation**

#### **Responsibilities of strata corporation**

**3** Except as otherwise provided in this Act, the strata corporation is responsible for managing and maintaining the common property and common assets of the strata corporation for the benefit of the owners.

### **Part 4 — Strata Corporation Governance**

#### **Division 1 — The Council**

#### **Council exercises powers and performs duties of strata corporation**

**26** Subject to this Act, the regulations and the bylaws, the council must exercise the powers and perform the duties of the strata corporation, including the enforcement of bylaws and rules.

### **Part 6 — Finances**

#### **Division 4 — Special Levies and User Fees**

#### **User fees**

**110** A strata corporation must not impose user fees for the use of common property or common assets by owners, tenants or occupants, or their visitors, other than as set out in the regulations.

### **Part 7 — Bylaws and Rules**

#### **Division 1 — General**

#### **Nature of bylaws**

**119** (1) The strata corporation must have bylaws.

(2) The bylaws may provide for the control, management, maintenance, use and enjoyment of the strata lots, common property and common assets of the strata corporation and for the administration of the strata corporation.

### **Unenforceable bylaws**

**121** (1) A bylaw is not enforceable to the extent that it

- (a) contravenes this Act, the regulations, the Human Rights Code or any other enactment or law,
- (b) destroys or modifies an easement created under section 69, or
- (c) prohibits or restricts the right of an owner of a strata lot to freely sell, lease, mortgage or otherwise dispose of the strata lot or an interest in the strata lot.

(2) Subsection (1) (c) does not apply to

- (a) a bylaw under section 141 that prohibits or limits rentals,
- (b) a bylaw under section 122 relating to the sale of a strata lot, or
- (c) a bylaw restricting the age of persons who may reside in a strata lot.

## **Division 3 — Enforcing the Bylaws and Rules**

### **Enforcement options**

**129** (1) To enforce a bylaw or rule the strata corporation may do one or more of the following:

- (a) impose a fine under section 130;
- (b) remedy a contravention under section 133;
- (c) deny access to a recreational facility under section 134.

(2) Before enforcing a bylaw or rule the strata corporation may give a person a warning or may give the person time to comply with the bylaw or rule.

### **Fines**

**130** (1) The strata corporation may fine an owner if a bylaw or rule is contravened by

- (a) the owner,
- (b) a person who is visiting the owner or was admitted to the premises by the owner for social, business or family reasons or any other reason, or
- (c) an occupant, if the strata lot is not rented by the owner to a tenant.

(2) The strata corporation may fine a tenant if a bylaw or rule is contravened by

- (a) the tenant,
- (b) a person who is visiting the tenant or was admitted to the premises by the tenant for social, business or family reasons or any other reason, or
- (c) an occupant, if the strata lot is not sublet by the tenant to a subtenant.

### **Landlord's and owner's responsibility for fines and costs incurred by tenant**

**131** (1) If the strata corporation fines a tenant or requires a tenant to pay the costs of remedying a contravention of the bylaws or rules, the strata corporation may collect the fine or costs from the tenant, that tenant's landlord and the owner, but may not collect an amount that, in total, is greater than the fine or costs.

(2) If the landlord or owner pays some or all of the fine or costs levied against the tenant, the tenant owes the landlord or owner the amount paid.

### **Maximum fines**

**132** (1) The strata corporation must set out in its bylaws the maximum amount it may fine an owner or tenant for each contravention of a bylaw or rule.

(2) The strata corporation may set out in its bylaws

- (a) different maximum amounts of fines for different bylaws and rules, and
- (b) the frequency at which fines may be imposed for a continuing contravention of a bylaw or rule.

(3) The maximum amount of a fine and the maximum frequency of imposition of fines must not exceed the maximums set out in the regulations.

### **Strata corporation may remedy a contravention**

**133** (1) The strata corporation may do what is reasonably necessary to remedy a contravention of its bylaws or rules, including

- (a) doing work on or to a strata lot, the common property or common assets, and,
- (b) removing objects from the common property or common assets.

(2) The strata corporation may require that the reasonable costs of remedying the contravention be paid by the person who may be fined for the contravention under section 130.

### **Denial of access to recreational facility**

**134** The strata corporation may, for a reasonable length of time, deny an owner, tenant, occupant or visitor the use of a recreational facility that is common property or a common asset if the owner, tenant, occupant or visitor has contravened a bylaw or rule relating to the recreational facility.

### **Complaint, right to answer and notice of decision**

**135** (1) The strata corporation must not

- (a) impose a fine against a person,
- (b) require a person to pay the costs of remedying a contravention, or
- (c) deny a person the use of a recreational facility

for a contravention of a bylaw or rule unless the strata corporation has

- (d) received a complaint about the contravention,
- (e) given the owner or tenant the particulars of the complaint, in writing, and a reasonable opportunity to answer the complaint, including a hearing if requested by the owner or tenant, and
- (f) if the person is a tenant, given notice of the complaint to the person's landlord and to the owner.

(2) The strata corporation must, as soon as feasible, give notice in writing of a decision on a matter referred to in subsection (1) (a), (b) or (c) to the persons referred to in subsection (1) (e) and (f).

(3) Once a strata corporation has complied with this section in respect of a contravention of a bylaw or rule, it may impose a fine or other penalty for a continuing contravention of that bylaw or rule without further compliance with this section.

### **Part 8 — Rentals**

#### **Restriction of rentals by strata corporation**

**141** (1) The strata corporation must not screen tenants, establish screening criteria, require the approval of tenants, require the insertion of terms in tenancy agreements or otherwise restrict the rental of a strata lot except as provided in subsection (2).

(2) The strata corporation may only restrict the rental of a strata lot by a bylaw that

- (a) prohibits the rental of residential strata lots, or
- (b) limits one or more of the following:
  - (i) the number or percentage of residential strata lots that may be rented;
  - (ii) the period of time for which residential strata lots may be rented.

(3) A bylaw under subsection (2) (b) (i) must set out the procedure to be followed by the strata corporation in administering the limit.

### **Limits to rental restriction bylaws**

**142** (1) For the purposes of this section, "family" and "family member" have the meaning set out in the regulations.

(2) A bylaw referred to in section 141 (2) does not apply to prevent the rental of a strata lot to a member of the owner's family.

(3) A rental of a strata lot to a family member under this section creates an assignment of the owner's powers and duties under section 148.

(4) If the bylaws of a strata corporation include a bylaw referred to in section 141 (2) (b) (i), a residential strata lot that has been rented

(a) to a member of the owner's family, or

(b) under an exemption from the bylaw granted or allowed under section 144

is not to be considered, for the purposes of that bylaw, as a residential strata lot that has been rented.

### **Rental restriction bylaw does not apply to some strata lots**

**143** (1) Subject to subsection (4), a bylaw that prohibits or limits rentals does not apply to a strata lot until the later of

(a) one year after a tenant who is occupying the strata lot at the time the bylaw is passed ceases to occupy it as a tenant, and

(b) one year after the bylaw is passed.

(2) Subject to subsection (1), if a strata lot has been designated as a rental strata lot on a Rental Disclosure Statement in the prescribed form, and if all the requirements of section 139 have been met, a bylaw that prohibits or limits rentals does not apply to that strata lot until,

(a) in the case of a Rental Disclosure Statement filed before January 1, 2010, the earlier of

(i) the date the strata lot is conveyed by the first owner of the strata lot other than the owner developer, and

(ii) the date the rental period expires, as disclosed in the Rental Disclosure Statement as it read on December 31, 2009, and

(b) in the case of a Rental Disclosure Statement filed after December 31, 2009, the date the rental period expires, as disclosed in the Rental Disclosure Statement.

(3) Even if a Rental Disclosure Statement filed before January 1, 2010 is changed under section 139 (2) after December 31, 2009, subsection (2) (a) of this section applies.

(4) Subsection (1) (b) does not apply to a bylaw that is passed under section 8 by the owner developer.

### **Exemption from rental restriction bylaw**

**144** (1) An owner may apply to the strata corporation for an exemption from a bylaw that prohibits or limits rentals on the grounds that the bylaw causes hardship to the owner.

(2) The application must be in writing and must state

(a) the reason the owner thinks an exemption should be made, and

(b) whether the owner wishes a hearing.

(3) If the owner wishes a hearing, the strata corporation must hear the owner or the owner's agent within 4 weeks after the date the application is given to the strata corporation.

(4) An exemption is allowed if

(a) the strata corporation does not give its decision in writing to the owner,

(i) if a hearing is held, within one week after the hearing, or

(ii) if no hearing is requested, within 2 weeks after the application is given to the strata corporation, or

(b) the owner requests a hearing under subsection (2) (b) and the strata corporation does not hold a hearing within 4 weeks after the date the application is given to the strata corporation.

(5) An exemption granted by the strata corporation may be for a limited time.

(6) The strata corporation must not unreasonably refuse to grant an exemption.

## **Part 10 — Legal Proceedings and Dispute Resolution**

### **Division 1 — Suits Against the Strata Corporation**

#### **Preventing or remedying unfair acts**

**164** (1) On application of an owner or tenant, the Supreme Court may make any interim or final order it considers necessary to prevent or remedy a significantly unfair

(a) action or threatened action by, or decision of, the strata corporation, including the council, in relation to the owner or tenant, or

(b) exercise of voting rights by a person who holds 50% or more of the votes, including proxies, at an annual or special general meeting.

(2) For the purposes of subsection (1), the court may

(a) direct or prohibit an act of the strata corporation, the council, or the person who holds 50% or more of the votes,

(b) vary a transaction or resolution, and

(c) regulate the conduct of the strata corporation's future affairs.

### **Division 2 — Suits by the Strata Corporation**

#### **Other court remedies**

**173** (1) On application by the strata corporation, the Supreme Court may do one or more of the following:

(a) order an owner, tenant or other person to perform a duty he or she is required to perform under this Act, the bylaws or the rules;

(b) order an owner, tenant or other person to stop contravening this Act, the regulations, the bylaws or the rules;

(c) make any other orders it considers necessary to give effect to an order under paragraph (a) or (b).

(2) If, under section 108 (2) (a),

(a) a resolution is proposed to approve a special levy to raise money for the maintenance or repair of common property or common assets that is necessary to ensure safety or to prevent significant loss or damage, whether physical or otherwise, and

(b) the number of votes cast in favour of the resolution is more than 1/2 of the votes cast on the resolution but less than the 3/4 vote required under section 108 (2) (a),

the strata corporation may apply to the Supreme Court, on such notice as the court may require, for an order under subsection (4) of this section.

(2.1) Section 171 (2) does not apply to an application under subsection (2).

(3) An application under subsection (2) must be made within 90 days after the vote referred to in that subsection.

(4) On an application under subsection (2), the court may make an order approving the resolution and, in that event, the strata corporation may proceed as if the resolution had been passed under section 108 (2) (a).

### **Division 3 — Administrator of Strata Corporation**

#### **Appointment of administrator**

**174** (1) The strata corporation, or an owner, tenant, mortgagee or other person having an interest in a strata lot, may apply to the Supreme Court for the appointment of an administrator to exercise the powers and perform the duties of the strata corporation.

(2) The court may appoint an administrator if, in the court's opinion, the appointment of an administrator is in the best interests of the strata corporation.

- (3) The court may
- (a) appoint the administrator for an indefinite or set period,
  - (b) set the administrator's remuneration,
  - (c) order that the administrator exercise or perform some or all of the powers and duties of the strata corporation, and
  - (d) relieve the strata corporation of some or all of its powers and duties.
- (4) The remuneration and expenses of the administrator must be paid by the strata corporation.
- (5) The administrator may delegate a power.
- (6) On application of the administrator or a person referred to in subsection (1), the court may remove or replace the administrator or vary an order under this section.
- (7) Unless the court otherwise orders, if, under this Act, a strata corporation must, before exercising a power or performing a duty, obtain approval by a resolution passed by a majority vote, 3/4 vote, 80% vote or unanimous vote, an administrator appointed under this section must not exercise that power or perform that duty unless that approval has been obtained.

#### **Division 4 — Arbitration**

##### **Disputes that can be arbitrated**

- 177** (1) Subject to sections 178 (1) and 178.1 (1) , the strata corporation may refer to arbitration a dispute with an owner or tenant if the dispute concerns a matter set out in subsection (3) of this section.
- (2) Subject to sections 178 (1) and 178.1 (1) , an owner or tenant may refer to arbitration a dispute with the strata corporation or with another owner or tenant if the dispute concerns a matter set out in subsection (3) of this section.
- (3) A dispute may be referred to arbitration under subsection (1) or (2) if it concerns any of the following:
- (a) the interpretation or application of this Act, the regulations, the bylaws or the rules;
  - (b) the common property or common assets;
  - (c) the use or enjoyment of a strata lot;
  - (d) money owing, including money owing as a fine, under this Act, the bylaws or the rules;
  - (e) an action or threatened action by, or decision of, the strata corporation, including the council, in relation to an owner or tenant;
  - (f) the exercise of voting rights by a person who holds 50% or more of the votes, including proxies, at an annual or special general meeting.

## Part 14 — Land Titles

### Strata plan requirements

#### 244 (1) A strata plan must

(a) show the boundaries of the land included in the strata plan and, except in the case of a strata lot in a bare land strata plan, show the location of the buildings,

(b) contain a description sufficient for the registrar to identify the title to the land included in the strata plan,

(c) show the boundaries of the strata lots in accordance with section 68, and distinguish the strata lots by numbers or letters in consecutive order,

(d) show the area in square metres of each strata lot, including the areas and spaces referred to in subsection (2), if they are part of a strata lot,

(e) comply with rules, if any, made under section 75 of the Land Surveyors Act for the purposes of this section,

(f) be endorsed by a British Columbia land surveyor with an endorsement that

(i) buildings shown on the strata plan are within the external boundaries of the land that is the subject of the strata plan, or

(ii) appropriate and necessary easements or other interests exist to provide for access to any parts of the building that are not within the boundaries,

(g) be signed by

(i) the person applying to deposit the plan under section 240, and

(ii) each holder of a registered charge on all or part of the land included in the strata plan,

unless, in the registrar's opinion, the interests of persons who have not signed are not adversely affected by the deposit of the plan,

(h) be endorsed by an approving officer

(i) if it is a phased strata plan, under sections 224 and 225,

(ii) if it is a bare land strata plan, under section 243, or

(iii) if it is both a phased strata plan and a bare land strata plan, under sections 224, 225 and 243.

(i) in the case of a strata plan that includes a building,

(i) be endorsed by a British Columbia land surveyor under section 241 if the building has not been previously occupied, or

(ii) be endorsed by an authorized signatory of an approving authority under section 242 if the building has been previously occupied, and

(j) contain anything that is required by the regulations.

(2) Parking stalls, garage areas, storage areas and similar areas or spaces intended to be used in conjunction with a residential strata lot must not be designated as separate strata lots but must be included as part of a strata lot or as part of the common property.

### **Strata plans: accompanying documents**

**245** A strata plan tendered for deposit in a land title office must be accompanied by

(a) a Schedule of Unit Entitlement in the prescribed form that complies with section 246, and

(i) if the unit entitlement has been calculated in accordance with section 246 (3) (a) (i) or (b) (i), a certificate of a British Columbia land surveyor that states that the schedule reflects the habitable area of residential strata lots and the total area of nonresidential strata lots, or

(ii) evidence of the superintendent's approval if required under section 246,

(b) if voting rights are set out in a schedule, a Schedule of Voting Rights in the prescribed form that complies with section 247 or 248, together with evidence of the superintendent's approval if the approval is required,

(c) the mailing address of the strata corporation as required by section 62 (1),

(d) any bylaws that differ in any respect from the Standard Bylaws, and

(e) the number of copies of the plan required by the registrar.

### ***Strata Property Regulation, B.C. Reg. 312/2009***

#### **User fees for the use of common property or common assets**

**6.9** For the purposes of section 110 of the Act, a strata corporation may impose user fees for the use of common property or common assets only if all of the following requirements are met:

(a) the amount of the fee is reasonable;

(b) the fee is set out

(i) in a bylaw, or

(ii) in a rule and the rule has been ratified under section 125 (6) of the Act.

**ALBERTA**

***Condominium Property Act, R.S.A. 2000, c. C-22***

**Board of a Corporation**

**Board of directors**

**28(1)** A corporation shall have a board of directors that is to be constituted as provided by the bylaws of the corporation.

(7) The powers and duties of a corporation shall, subject to any restriction imposed or direction given in a resolution passed at a general meeting, be exercised and performed by the board of the corporation.

**Bylaws**

**Bylaws**

**32(1)** The bylaws 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) The owners of the units and anyone in possession of a unit are bound by the bylaws.

(3) Any bylaw may be amended, repealed or replaced by a special resolution.

(4) An amendment, repeal or replacement of a bylaw 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.

(5) No bylaw 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.

(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 and perform all the provisions of the bylaws.

(7) If there is a conflict between the bylaws and this Act, this Act prevails.

RSA 1980 cC-22 s26;1996 c12 s26

**Sanctions for failure to comply with bylaws**

**35(1)** The corporation may by bylaw impose monetary or other sanctions on owners, tenants and invitees of the owners or tenants who fail to comply with the bylaws.

- (2) A bylaw under which sanctions are imposed must
  - (a) set out the sanctions that may be imposed, and
  - (b) in the case of monetary sanctions, set out the amount of the monetary sanctions or the range of monetary sanctions that may be imposed.
- (3) A bylaw under which sanctions may be imposed may be general or specific in its application.
- (4) A sanction imposed under this section must be reasonable in the circumstances for which it is imposed.
- (5) Where a person fails to abide by a sanction or to pay to the corporation a monetary sanction imposed under a bylaw, the corporation may proceed under section 36 to enforce the sanction.
- (6) A sanction may not be imposed that has the effect of prohibiting or restricting the devolution of units or any transfer, lease, mortgage or other dealing with the units or of destroying or modifying any easement implied or created by this Act.

1996 c12 s29

### **Enforcement of sanctions**

- 36(1)** If a person fails to comply with a sanction or to pay a monetary sanction imposed pursuant to a bylaw, the corporation may, in respect of the contravention,
- (a) take proceedings under Part 4 of the Provincial Court Act to recover from the person
    - (i) a monetary sanction, or
    - (ii) damages, in the case of any other sanction, in an amount not exceeding the amount that may be granted in damages under the Provincial Court Act, or
  - (b) take proceedings in the Court of Queen's Bench to recover from the person
    - (i) a monetary sanction of not more than \$10 000, or
    - (ii) damages of not more than \$10 000, in the case of any other sanction.
- (2) In an action under subsection (1), the corporation must establish to the satisfaction of the court hearing the matter that
- (a) the bylaws relating to the matter before the court were properly enacted, and
  - (b) the bylaw for which the sanction was imposed was contravened by the defendant.
- (3) On hearing the matter, the court may do one or more of the following:
- (a) give judgment against the defendant in the amount being sued for or any lesser amount as appears appropriate in the circumstances;

(b) in the case of proceedings taken in the Court of Queen's Bench, grant injunctive or other relief that the Court considers appropriate in the circumstances;

(c) dismiss the action;

(d) make an award as to costs as appears appropriate in the circumstances.

(4) For the purposes of an action commenced under subsection (1)(a)(ii) or (b)(ii), once the court is satisfied that the requirements of subsection (2) have been met, damages are deemed to have been suffered by the corporation.

(5) Where a corporation takes proceedings under this section, it is entitled to claim from the defendant the corporation's legal expenses incurred in respect of the proceedings.

(6) For the purposes of subsection (2)(a), a copy of a bylaw that is certified by the Registrar as being a true copy of the bylaw filed at the land titles office is proof, in the absence of evidence to the contrary,

(a) of the contents of the bylaw, and

(b) that the bylaw was properly enacted.

(7) An action taken against a person under this section does not restrict, limit or derogate from any other remedy that an owner or the corporation may have against that person.

RSA 1980 cC-22 s29;1983 c71 s12;1996 c12 s30;2000 c11 s8

### **Powers and Duties of Corporation**

#### **Control and management**

**37(1)** A corporation is responsible for the enforcement of its bylaws 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:

(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 municipal 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.

RSA 1980 cC-22 s30; 1996 c12 s60

## **Administration of Corporation**

### **Appointment of administrator**

**58(1)** A corporation or a person having a registered 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 the administrator.

(6) The Court may, on the application of an administrator or a person referred to in subsection (1), remove or replace the administrator.

RSA 2000 cC-22 s58;2008 c43 s2

## **Miscellaneous**

### **Court ordered remedy**

**67(1)** In this section,

(a) “improper conduct” means

(i) non-compliance with this Act, the regulations or the bylaws by a developer, a corporation, an employee of a corporation, a member of a board or an owner,

(ii) the conduct of the business affairs of a corporation in a manner that is oppressive or unfairly prejudicial to

### **Alternate dispute resolution**

**69(1)** Any dispute respecting any matter arising under this Act or in respect of the bylaws of a corporation may, with the agreement of the parties to the dispute,

(a) be dealt with by means of mediation, conciliation or similar techniques to encourage settlement of the dispute, or

(b) be arbitrated under the Arbitration Act.

(2) Nothing in subsection (1) shall be construed so as to prohibit a dispute from being arbitrated subsequent to an unsuccessful attempt to deal with the dispute by means of mediation, conciliation or a similar technique.

1996 c12 s52

## **ONTARIO**

### ***Condominium Act, 1998, S.O., c. 19***

#### **PART II**

#### **REGISTRATION AND CREATION**

##### **Declaration and Description**

##### **Requirements for declaration**

7. (1) A declaration shall not be registered unless the declarant has executed it in the manner prescribed by the Act under which it is to be registered. 1998, c. 19, s. 7 (1).

#### **PART IV**

#### **CORPORATION**

##### **General**

##### **Objects**

17. (1) The objects of the corporation are to manage the property and the assets, if any, of the corporation on behalf of the owners. 1998, c. 19, s. 17 (1).

##### **Duties**

(2) The corporation has a duty to control, manage and administer the common elements and the assets of the corporation. 1998, c. 19, s. 17 (2).

##### **Ensuring compliance**

(3) The corporation has a duty to take all reasonable steps to ensure that the owners, the occupiers of units, the lessees of the common elements and the agents and employees of the corporation comply with this Act, the declaration, the by-laws and the rules. 1998, c. 19, s. 17 (3).

##### **Directors and Officers**

##### **Board of directors**

27. (1) A board of directors shall manage the affairs of the corporation. 1998, c. 19, s. 27 (1).

##### **By-laws and Rules**

##### **By-laws**

56. (1) The board may, by resolution, make, amend or repeal by-laws, not contrary to this Act or to the declaration,

- (a) to govern the number, qualification, nomination, election, resignation, removal, term of office and remuneration of the directors, subject to subsection (2);
- (b) to regulate board meetings, the form of board meetings and the quorum and functions of the board;
- (c) to provide that the quorum for the transaction of business at a meeting of owners is those owners who own  $33\frac{1}{3}$  per cent of the units of the corporation, subject to subsection 50 (2);
- (d) to govern the appointment, remuneration, functions, duties, resignation and removal of agents, officers and employees of the corporation and the security, if any, to be given by them to it;
- (e) subject to subsection (3), to authorize the borrowing of money to carry out the objects and duties of the corporation;
- (f) to authorize the corporation to object to assessments under the Assessment Act on behalf of owners if it gives notice of the objections to the owners, and to authorize the defraying of costs of objections out of the common expenses;
- (g) to govern the assessment and collection of contributions to the common expenses;
- (h) to establish what constitutes a standard unit for each class of unit specified in the by-law for the purpose of determining the responsibility for repairing improvements after damage and insuring them;
- (i) to extend the circumstances described in subsection 105 (2) under which an amount shall be added to the common expenses payable for an owner's unit for the purposes of subsection 105 (3);
- (j) to govern the maintenance of the units and common elements;
- (k) to restrict the use and enjoyment that persons other than occupants of the units may make of the common elements and assets of the corporation, subject to any agreement made by the corporation with respect to the use and enjoyment of its common elements and assets that it shares with another person;
- (l) to govern the management of the property;
- (m) to govern the use and management of the assets of the corporation;
- (n) to specify duties of the corporation in addition to the duties set out in this Act and the declaration;
- (o) to establish the procedure with respect to the mediation of disputes or disagreements between the corporation and the owners for the purpose of section 125 or 132; or
- (p) to govern the conduct generally of the affairs of the corporation. 1998, c. 19, s. 56 (1).

### **By-laws to be reasonable**

(6) The by-laws shall be reasonable and consistent with this Act and the declaration. 1998, c. 19, s. 56 (6).

### **Inconsistent provisions**

(8) If any provision in a by-law or a proposed by-law is inconsistent with the provisions of this Act, the provisions of this Act shall prevail and the by-law or proposed by-law, as the case may be, shall be deemed to be amended accordingly. 1998, c. 19, s. 56 (8).

## **PART V**

### **SALE AND LEASE OF UNITS**

#### **Disclosure Requirements**

##### **Disclosure statement**

**72.** (1) The declarant shall deliver to every person who purchases a unit or a proposed unit from the declarant a copy of the current disclosure statement made by the declarant for the corporation of which the unit or proposed unit forms part. 1998, c. 19, s. 72 (1).

##### **Purchaser not bound**

(2) An agreement of purchase and sale of a unit or a proposed unit entered into by a declarant is not binding on the purchaser until the declarant has delivered to the purchaser a copy of the current disclosure statement. 1998, c. 19, s. 72 (2).

##### **Contents**

- (3) A disclosure statement shall specify the date on which it is made and shall contain,
- (a) a table of contents prepared in accordance with subsection (4) and located at the beginning of the disclosure statement;
  - (b) a statement indicating,
    - (i) whether the corporation is a freehold condominium corporation or a leasehold condominium corporation, and
    - (ii) if the corporation is a freehold condominium corporation, the type of freehold condominium corporation that it is;
  - (c) a statement of the name and municipal address of the declarant and the mailing address of the property or the proposed property and its municipal address if available;
  - (d) a general description of the property or proposed property including the types and number of buildings, units and recreational and other amenities together with all conditions that apply to the provision of amenities;

- (e) if the declarant has made an application for approval described in subsection 9 (4), a summary of the reports, if any, that the approval authority has required be made under subsection 9 (4) and the agreements, if any, that the approval authority has imposed under subsection 9 (5) as a condition of approval;
- (f) a statement indicating whether the property or part of the property is or may be subject to the Ontario New Home Warranties Plan Act or whether the declarant has enrolled or intends to enrol the proposed units and common elements in the Plan within the meaning of that Act in accordance with the regulations made under that Act;
- (g) a statement whether a building on the property or a unit or a proposed unit has been converted from a previous use;
- (h) a statement whether one or more units or proposed units may be used for commercial or other purposes not ancillary to residential purposes;
- (i) a statement of the portion of units or proposed units which the declarant intends to market in blocks of units to investors;
- (j) a statement of the portion of units or proposed units, to the nearest anticipated 25 per cent, that the declarant intends to lease;
- (k) if construction of amenities is not completed, a schedule of the proposed commencement and completion dates;
- (l) a list of the amenities that the declarant proposes to provide to the purchaser during a period of interim occupancy of a proposed unit under section 80;
- (m) a copy of the existing or proposed declaration, by-laws, rules and insurance trust agreement, if any;
- (n) a brief description of the significant features of all agreements or proposed agreements mentioned in section 111, 112, 113 or 114 and of all agreements or proposed agreements between the corporation and another corporation;
- (o) a statement of whether, to the knowledge of the declarant, the corporation intends to amalgamate with another corporation or whether the declarant intends to cause the corporation to amalgamate with another corporation within 60 days of the date of registration of the declaration and description for the corporation;
- (p) if an amalgamation is intended under clause (o), a copy of the proposed declaration, description, by-laws and rules for the amalgamated corporation, if available;
- (q) a copy of the budget statement described in subsection (6);
- (r) a copy of the budget of the corporation for the current fiscal year if more than one year has passed since the registration of the declaration and description for the corporation;
- (s) a statement setting out the fees or charges, if any, that the corporation is required to pay to the declarant or another person; and

(t) all other material that the regulations made under this Act require. 1998, c. 19, s. 72 (3); 2001, c. 9, Sched. D, s. 3 (1).

### **Table of contents**

(4) The table of contents in the disclosure statement shall be in the prescribed form, shall indicate whether the declaration, by-laws, rules or the proposed declaration, by-laws or rules of the corporation or any other material in the disclosure statement deal with the following matters and, if so, shall indicate where the matters are dealt with:

1. A statement indicating,
  - i. whether the corporation is a leasehold condominium corporation or a freehold condominium corporation, and
  - ii. if the corporation is a freehold condominium corporation, the type of freehold condominium corporation that it is.
2. The property or part of the property is or may be subject to the Ontario New Home Warranties Plan Act or the proposed units and common elements are enrolled or are intended to be enrolled in the Plan within the meaning of that Act in accordance with the regulations made under that Act.
3. A building on the property or a unit or a proposed unit has been converted from a previous use.
4. One or more units or proposed units may be used for commercial or other purposes not ancillary to residential purposes.
5. A provision exists with respect to pets on the property or the proposed property.
6. There exist restrictions or standards with respect to the occupancy or use of units or proposed units or the use of common elements or proposed common elements that are based on the nature or design of the facilities and services on the property or on other aspects of the buildings located on the property.
7. A statement of the portion of units or proposed units, to the nearest anticipated 25 per cent, that the declarant intends to lease.
8. A statement whether the proportion, expressed in percentages, of the common interest appurtenant to any unit or proposed unit differs in an amount of 10 per cent or more from that appurtenant to any other unit or proposed unit of the same type, size and design.
9. A statement whether the proportion, expressed in percentages, in which the owner of any unit or proposed unit is required to contribute to the common expenses differs in an amount of 10 per cent or more from that required of the owner of any other unit or proposed unit of the same type, size and design.
10. A statement whether any unit or proposed unit is exempt from a cost attributable to the rest of the units or proposed units.

11. Part or the whole of the common elements or the proposed common elements are subject to a lease or licence.

12. A statement whether parking is allowed in or on a unit, on the common elements or on a part of the common elements of which an owner has exclusive use and a statement of the restrictions on parking.

13. Any other statement specified in the regulations made under this Act. 1998, c. 19, s. 72 (4).

### **Copy of budget**

(5) On the request of the declarant, the corporation shall, promptly and without charge, provide a copy of its budget for the current fiscal year to the declarant. 1998, c. 19, s. 72 (5).

### **Budget statement**

(6) The budget statement is a statement for the one-year period immediately following the registration of the declaration and description and shall contain,

(a) a statement of the common expenses of the corporation;

(b) a statement of the proposed amount of each expense of the corporation, including the cost of the reserve fund study required for the year, the cost of the performance audit under section 44 and the cost of preparing audited financial statements if subsection 43 (7) requires the declarant to deliver them within one year following the registration of the declaration and description;

(c) particulars of the type, frequency and level of the services to be provided;

(d) a statement of the projected monthly common expense contribution for each type of unit;

(e) a statement of the portion of the common expenses to be paid into a reserve fund;

(f) a statement of the status of all pending lawsuits material to the property of which the declarant has actual knowledge and that may affect the property after the registration of a deed to the unit from the declarant to the purchaser;

(g) a statement of the amounts of all current or expected fees, charges, rents or other revenue to be paid to or by the corporation or by any of the owners for the use of the common elements or other facilities related to the property, unless a turn over meeting has been held under section 43;

(h) a statement of all services not included in the budget that the declarant provides, or expenses that the declarant 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;

(i) a statement of the projected amounts in all reserve funds at the end of the current fiscal year;

- (j) a summary of the most recent reserve fund study, if any; and
- (k) all other material that the regulations made under this Act require. 1998, c. 19, s. 72 (6).

## **PART IX ENFORCEMENT**

### **Administrator**

**131.** (1) Upon application by the corporation, a lessor of a leasehold condominium corporation, an owner or a mortgagee of a unit, the Superior Court of Justice may make an order appointing an administrator for a corporation under this Act if at least 120 days have passed since a turn-over meeting has been held under section 43. 1998, c. 19, s. 131 (1); 2000, c. 26, Sched. B, s. 7 (7).

### **Mediation and arbitration**

**132.** (1) Every agreement mentioned in subsection (2) shall be deemed to contain a provision to submit a disagreement between the parties with respect to the agreement to,

- (a) mediation by a person selected by the parties unless the parties have previously submitted the disagreement to mediation; and

- (b) unless a mediator has obtained a settlement between the parties with respect to the disagreement, arbitration under the Arbitration Act, 1991,

- (i) 60 days after the parties submit the disagreement to mediation, if the parties have not selected a mediator under clause (a), or

- (ii) 30 days after the mediator selected under clause (a) delivers a notice stating that the mediation has failed. 1998, c. 19, s. 132 (1).

### **Application**

(2) Subsection (1) applies to the following agreements:

1. An agreement between a declarant and a corporation.
2. An agreement between two or more corporations.
3. An agreement described in clause 98 (1) (b) between a corporation and an owner.
4. An agreement between a corporation and a person for the management of the property. 1998, c. 19, s. 132 (2).

### **Disagreements on budget statement**

(3) The declarant and the board shall be deemed to have agreed in writing to submit a disagreement between the parties with respect to the budget statement described in subsection

72 (6) or the obligations of the declarant under section 75 to mediation and arbitration in accordance with clauses (1) (a) and (b) respectively. 1998, c. 19, s. 132 (3).

### **Disagreements between corporation and owners**

(4) Every declaration shall be deemed to contain a provision that the corporation and the owners agree to submit a disagreement between the parties with respect to the declaration, by-laws or rules to mediation and arbitration in accordance with clauses (1) (a) and (b) respectively. 1998, c. 19, s. 132 (4).

### **Duty of mediator**

(5) A mediator appointed under clause (1) (a) shall confer with the parties and endeavour to obtain a settlement with respect to the disagreement submitted to mediation. 1998, c. 19, s. 132 (5).

### **Fees and expenses**

(6) Each party shall pay the share of the mediator's fees and expenses that,

(a) the settlement specifies, if a settlement is obtained; or

(b) the mediator specifies in the notice stating that the mediation has failed, if the mediation fails. 1998, c. 19, s. 132 (6).

### **Record of settlement**

(7) Upon obtaining a settlement between the parties with respect to the disagreement submitted to mediation, the mediator shall make a written record of the settlement which shall form part of the agreement or matter that was the subject of the mediation. 1998, c. 19, s. 132 (7).

### **Oppression remedy**

135. (1) An owner, a corporation, a declarant or a mortgagee of a unit may make an application to the Superior Court of Justice for an order under this section. 1998, c. 19, s. 135 (1); 2000, c. 26, Sched. B, s. 7 (7).

### **Grounds for order**

(2) On an application, if the court determines that the conduct of an owner, a corporation, a declarant or a mortgagee of a unit is or threatens to be oppressive or unfairly prejudicial to the applicant or unfairly disregards the interests of the applicant, it may make an order to rectify the matter. 1998, c. 19, s. 135 (2).

### **Contents of order**

(3) On an application, the judge may make any order the judge deems proper including,

(a) an order prohibiting the conduct referred to in the application; and

(b) an order requiring the payment of compensation. 1998, c. 19, s. 135 (3).

## **Schedule B –Sample Bylaws**

### **Bylaw targeting Airbnb but not corporate housing:**

A condominium unit must not be used for the purposes of a short term accommodation or vacation rental. For the purposes of this bylaw, “short term accommodation” means using a condominium unit or allowing another person to use the condominium unit for period of time of less than 30 days.

### **Bylaw restricting businesses but not corporate housing:**

An owner, tenant, or visitor shall not operate a business in a condominium unit for commercial or professional purposes. A “business” shall not include a home office involving only administrative business or persons occupying a condominium unit pursuant to a valid sublease or licence for long term housing purposes.

### **Bylaw limiting rentals by time to discourage vacation rentals but permit longer term corporate housing as a compromise to blanket prohibitions:**

An owner, tenant, or occupant shall not permit a unit to be occupied under a lease, sublease, contract, license or any other commercial arrangement for periods of less than [X] days.

### **Bylaw allowing an exception for move-in-move-out fees/rules:**

An appointment for moving in/out shall be made with the Concierge (three (3) business days advance notice) having regard for the convenience of all concerned and noise abatement.

Moves are restricted to the following days and times:

Mondays to Fridays	Weekends
10 a.m. to 1 p.m.	8 a.m. to 11 a.m.
and	11 a.m. to 2 p.m., and
1 p.m. to 4 p.m.	2 p.m. to 5 p.m.

except by special arrangement with the Concierge.

A non-refundable fee of \$200 shall be paid to the Corporation before a move in or a move out can proceed. The concierge will disarm the entrance door alarm and lock out an elevator. On completion of a move and inspection of Common Property, the security system will be re-armed.

In the case of furnished suites and moves that do not require the moving of furniture or other large items, a non-refundable fee of \$25 will be paid to the Corporation before a move in or move out can proceed. The concierge must be notified in advance of any move in or move out in the case of furnished suites.

**Bylaw requiring registration for security purposes**

Owners and tenants must provide to the strata corporation the following information where an occupant, other than the owners or tenants, occupies a condominium unit:

- (a) the full name(s) of the occupant(s);
- (b) the contact information for the occupant(s), including telephone number; and
- (c) the expected duration of the occupant's(s') occupation of the condominium unit.