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Condominium Act Amendments Passed

Amendments to the *Condominium Act*

On March 25, Hon. Colton Leblanc, the Minister responsible for the *Condominium Act*, introduced Bill 106 in the Legislature. With Nova Scotia's usual fast legislative process, it was approved on April 7. It will come into effect only when it is proclaimed by the Government.

This legislation includes a number of amendments which arose from a process of consultation over the last several years. A discussion paper was issued for comment in 2018, and the CCI-NS submitted comments in 2019. Only some of the items raised in the consultation are in the amendments, and many of the changes of those are simply to update references or clarify wording. However, there are some changes of substance.

Additional information in the Declaration

New declarations must include a "clear explanation" of the way that each unit's percentage ownership of common elements, voting power, and contribution to common expenses were determined. This does not apply to existing condominiums, and there is no requirement for existing condominiums to add such a statement. The Act will still permit these three percentages – ownership, voting, and contribution – to be different, but at least the basis of allocation must be explained.

Clarification of voting

The Act refers in some places to "consent" of the owners of a specific

percentage of the common elements and in others to a "vote" of owners holding those percentages. The amendment does not rationalize these two ways of approving changes, but it does clarify that for the "vote" sections, it must be an "affirmative vote" of that percentage of ownership. (Apparently someone argued that a majority vote was all that was required if that percentage of owners voted!)

Unfortunately, neither the discussion paper nor the amendments review the levels of approval that are needed for various changes, or the requirement that it must be a percentage of all owners (making those who do not vote count automatically as "no" votes.) Nor does it give any guidance on how these percentage-of-all-ownership votes or consents are to be taken.

Handover meeting

The amendment requires that there be first meeting of owners, at which the Board of Directors must be elected at the *earlier* of one year from the sale of the first unit by the developer, or within 45 days after the developer no longer owns more than 50% of the units. (Formerly it was only after the developer's ownership dropped below 50% of the units.)

Corporation purchase of units

Condominium corporations are now prohibited from purchasing or contracting to purchase units until the Board is elected. (However, the initial Board might still be controlled by the developer if it is constituted while the developer still owns the majority of the units.)

Financial statements of small condominiums

The discussion paper invited comments on whether small condominium corporations (less than 10 units) should be required to have audited financial statements. That proposal is not included in these amendments. Small corporations may continue to have unaudited financial statements, but those statements must be approved by the Board and signed by two directors.

Filing financial statements with the Registrar of Condominiums

The amendments will require that the annual financial statements must be filed with the Registrar within 90 days after the Annual General Meeting; formerly they had to be provided 10 days before the AGM, when notice of the AGM was given to owners. (The provision is included in a section of the Act that refers to audited statements, and it is not clear if small condominiums with unaudited statements must file.)

Estoppel Certificates

The amendments provide that future Estoppel Certificates will have to include a statement of whether the corporation's reserve fund is "managed in accordance with the most recent reserve-fund study". This is presumably intended to be a statement of whether the Fund is at the level forecast in the Study.

Changes in Common Elements or Assets

The majority required for less-than-substantial changes or improvements to the common elements is increased from a simple majority to 66 2/3%. ("Substantial" changes – greater than 25% of the appraised value of the property – require approval by 80% or such greater percentage as is specified in the declaration). On its face, this applies to *any change or improvement to the common elements* – a great restriction on the ability of the board to manage the property.

CCI-NS supported this change but, as noted below, this was on the basis that there would be a threshold within which the Board could manage without the need for owner approval. This, unfortunately, was not included, and the result is that Boards may be unable to make even small improvements or changes without canvassing every owner and getting two-thirds support. Boards will be discouraged from making improvements.

Procedures for meetings and voting

During the pandemic State of Emergency, all corporations were permitted to hold meetings virtually. There was a brief consultation about whether to make this permanent but, rather than including this amendment in Bill 106, Minister Colton subsequently introduced a separate *Act to Permit Virtual Business Meetings*. This adds a new section 14AA to the *Condominium Act*, which provides that "subject to the corporation's declaration and by-laws" meetings may be held fully or partially by electronic communications.

Nevertheless, Bill 106 included a provision that votes or consents, where required by the Act, can be given by fax or electronic mail "in accordance with the declaration or by laws". It is not clear why the provisions about meetings and voting were separated.

The provisions are consistent that, unless such voting is already per-

mitted in their governing documents, corporations that wish to hold electronic meetings or use electronic voting will have to amend their declarations or by-laws.

It is unfortunate that the drafters of the voting provision of Bill 106 have used technology-specific language (including the obsolescent fax technology). It is quite conceivable that both fax and email will be overtaken by other electronic communications technologies, and further amendments will be needed.

Proceeds of sale of part of the property

Formerly, if part of the property was sold (with 80% approval) the proceeds of sale were shared by owners in proportion to their common element ownership. Under the amendments, proceeds must be paid into the Reserve Fund or Contingency Fund, although they still may be paid out to owners with 80% approval.

Developers' sales materials

All sales materials or advertisements for initial sales of units will be required to clearly state that the property is a condominium development. (This might not be obvious in a bare-land condominium.)

Identification of tenants

The discussion paper invited comment on whether leases of units should be provided by unit owners to the condominium corporation. This requirement was not included in the amendments, but owner-landlords will be required to advise the corporation of the names and addresses of all tenants.

Changes recommended by CCI-NS that were not included

- We had recommended that the regulations be amended to provide guidance on how long the voting must be kept open on the various provisions in the act where a vote or consent of a percentage of all owners is required. This is not in the present amendments to the Act, but perhaps there will be later amendments to the Regulations.
- We recommended that there be a special provision for governance of very small condominium corporation (which may have as few as two units), which now do not fit within the requirements of the Act.
- We recommended that the provision governing how a person can be removed from the Board be changed from the present, unusual, voting rule.
- We recommended that the requirement of 66 2/3% approval of any changes be subject to a reasonable threshold, within which the Board could act. Unfortunately, this was not accepted.

The *Condominium Act* dates from 1971 and is showing its age. It has been amended many times, which has led to a number of inconsistencies in the Act. It is probably time for a thorough review.

The present amendments, although generally useful (or at least harmless, except for this increase of the approval level for insubstantial changes) are only a beginning. ■