



Government
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Saskatchewan

Condominium Property Law

- Saskatchewan Land Surveyors Association
 - November 27, 2014



What we will talk about?

- Completion of the review of Condominium Property Law
- Highlights of various changes and areas of interest
- Q and A?



The Act and Regulations

- *The Condominium Property Act, 1993 (Act)*
- *The Condominium Property Regulations, 2001 (Regs)*
- Both amended as of June 16, 2014
- All changes are incorporated into current versions at www.qp.gov.sk.ca
- All forms are included in the regulations



To Be Discussed

- Unit Types
- Bare land v. Phased
- Services Units
- Conversion Units
- Parking
- Property
- Plan Amendments
- Redivision of Units
- Security
- Financial Statements
- Reserve Fund Study
- Annual Returns
- Bylaw Changes
- Standard Unit Description
- Insurance
- Minutes
- Short Term Rentals
- Dispute Resolution
- Estoppel Certificate



Unit Types

- **Act s. 2(1)(bb) – Unit means:**
 - Bare land unit
 - Described as a unit in a condo plan by reference to boundaries governed by monuments placed pursuant to *The Land Surveys Act, 2000* respecting subdivision surveys
 - Building unit
 - described as a unit on a condo plan by reference to floors, walls or ceilings or other monuments as defined in *The Land Surveys Act, 2000* within the building
 - A services unit
 - A conversion unit
 - A parking unit
- **Act s. 8 & 9:**
 - Boundaries of Units need to shown on plan



Bare land Developments

- **Act s.2(1)(c) – Bare land:**
 - A plan that divides a parcel into bare land units
 - Bare land units are land that is situated within a parcel and described as a unit governed by monuments as defined in *The Land Surveys Act, 2000* within the building
 - Bare land units are often later redivided to include regular units defined by floors, walls or ceilings
 - example apartment style condominiums



Phased Developments

- **Phased:**
 - A plan to build a condominium in phases pursuant to the Act
 - Different than a bare land condominium as phased condos are subject to:
 - Timelines with extension requirements
 - Additional security requirements
 - For each phase
 - replacement plan for next phase must be titled within two years (s.17)
 - extension with owners consent
 - maximum two additional years (s.19)
 - extension by court order – no limit on extension (s.20)



Services Units

- **Act s. 2(1)(y.2) - Added in 2009:**
 - Owned by the condominium corporation
 - Shown on condominium plan as a unit
 - Consists of areas for the use and benefit of all owners
 - Can include:
 - Laundry room
 - Recreational facility
 - Landscaping areas
 - Roadways
 - Hallways



Conversion Units

- **Act s. 2(1)(j.2):**
 - A unit contained on a condominium plan that converts existing premises used for any purpose into units used for residential purposes



Parking – Residential Requirements

- **Act s. 11(1) - A condominium plan must include:**
 - At least one parking space as an exclusive use area for each unit; or
 - At least one parking unit for each unit
- **Act s.11(2) – except when:**
 - Local authority zoning does not require;
 - Units are not intended for residential use; or
 - A parking area or garage is included as part of a unit



Parking- Spaces versus Units

- **Act s. 2(1)(s.1) - Parking Space:**
 - An area of common property or services unit that is used for parking
- **Act s. 2(1)(s.2) - Parking Unit:**
 - Added in 2009
 - A titled unit that is used for parking
 - May be bought and sold with some restrictions as it relates to designation to a residential unit
 - Recorded in the Land Registry in the same way as other unit titles
 - Can convert from space to unit



Parking – Designation

- **On the Plan:**
 - Parking location is still shown on plan
 - Designation of parking used to be shown on plan
 - Re-designation of parking used to occur on plan
 - Designation and Re-designation is no longer on the plan



Parking – Designation

- **In the Land Registry:**
 - Designation and re-designation now occurs in the Land Registry
 - Parking Spaces
 - Designated via registration of a Parking Designation Interest and Form F.1
 - Re-designation via an amendment of the interest and Form D
 - Parking Units
 - Designated via a title in the name of the owner and a link between unit titles and parking titles and Form F.1
 - Re-designation via a transfer



Parking – Conversion

- **Regs s. 15.2 - Conversion Process:**
 - A special resolution approving the conversion
 - An application to ISC to obtain approval of a new condominium plan
 - An application to ISC to issue new titles
 - ISC fees



Parking – P & D Act

- **Regulation 8(4) – Assessment of Parcel:**
 - No approval for bare land unit under *The Planning and Development Act, 2007*.
 - If it is designated to a unit intended for residential purposes; or
 - Found on a plan on which at least 80% of the parking units are designated to a unit for residential purposes



Parking – Taxation

- **Act s. 93 – Assessment of Parcel:**
 - A unit includes:
 - The owner's share of the common property
 - If residential, any parking unit or parking space designated pursuant to section 11 of the Act
 - In the case of a bare land unit, the improvements to the unit
 - No separate assessment for a parking unit designated pursuant to section 11



Property

- **Act s. 34(5) – Acquire Real Property**
 - Can acquire or dispose of an interest in real property for use by the corporation by special resolution
 - Cannot be used for the purpose of an investment
- **Act s. 70 & 71 – Transfer or Lease of Common Property**
 - Can transfer or lease any common property or services units with an unanimous resolution
 - require a new or amended plan for transfer



Plan Amendments

- **Act s. 14 – Plan Amendment Process:**
 - Written consent from:
 - 100% of the owners and mortgage holders; or
 - 80% of the owners and mortgage holders with proof of service of notice of the amending instrument on those that did not consent
 - An application to ISC to obtain approval of a new or amended condominium plan
 - An application to ISC to issue new titles
 - ISC fees



Redivision of Units

- **Act s. 25 – Redivision of Units Process:**
 - Approval of local authority
 - Approval of the Corporation for any new common property or services units
 - Written consent from the owner and mortgage holder of the unit to be redivided
 - An application to ISC to obtain approval of a new or amended condominium plan
 - An application to ISC to issue new titles
 - Designation of parking space or parking unit to each new residential unit
 - ISC fees



Security - Posting

- **Sections 5.2 and 16 of the Act:**
 - Required to post security or obtain a waiver for all condominiums that include residential units, or if bareland or phased
 - Before raising of new titles for the condo plan
- **Sections 16 and 22 of the Act:**
 - Minister of Justice is responsible
 - Delegated duties to Office of Public Registry Administration



Security - Protection

- **Bare land**
 - Security protects completion of the condo's common property, common facilities and services units
- **Phased**
 - Security protects completion of the condo's common property, common facilities, services units and additional units in the subsequent phases



Security – Acceptable Types

- **Regs s.16 and 16.1- Types of Acceptable Security:**
 - A bond issued by a licensed insurer
 - An irrevocable letter of credit
- **Act s.2(1)(n) - Who posts?**
 - Developer
 - The person who was the registered owner of the buildings and land included on the condo plan on the day on which the plan was approved and titles issued pursuant to the approved plan



Security - Amount

- **Regs s. 17 - Amount as of June 16, 2014:**
 - $\leq \$500,000$ – equal to the cost
 - $> \$500,000$ to $< \$2.5$ million - \$500,000
 - $> \$2.5$ million – 20% of the cost
- **Different formula prior to June 16, 2014 with maximum amount of \$200,000**



Security - Release

- **Regs s. 18 & 19 – Release of Security:**
 - On more than 50% complete of items listed on Developer's Declaration
 - Form I - May request a 50% reduction
 - Once all work on Developer's Declaration is complete
 - Form M - May request 100% release
 - Notice is provided to the condominium corporation



Financial Statements

- Commencing June 16, 2014
- Act s. 39(3) indicates must be audited annually
- Regs s. 53.1 prescribes the person:
 - Must be a member in good standing of a recognized accounting profession that is regulated by an Act
 - Must be prepared in accordance with generally accepted accounting principles published by Chartered Professional Accountants of Canada
- **Regs s. 53.1(d) indicates who auditor cannot be**



Financial Statements

- Regs s. 53.2 provides available options:
 - If more than 50 units:
 - Audit is mandatory
 - If 12 units to 50 units:
 - With 100% consent - No audit or review
 - With 80% consent - No audit but still require a review
 - If fewer than 12 units:
 - No audit requirement, but still require a review
 - With 80% consent – No review



Financial Statements

- **Other things to note:**
 - Regs s. 53.2(5)(b)
 - Consent is only good until the next annual general meeting
 - Regs s. 53.2(1)
 - Calculation of units does not include parking or services units



Reserve Fund Study

- Commencing June 16, 2014
- Regs s. 51.2 indicates must be conducted every five years
- Regs s. 51.1(d) defines a qualified person:
 - Must hold liability insurance in a minimum amount of one million
 - Includes:
 - Applied Science Technologists
 - Accredited Appraisers
 - Architects
 - Certified Reserve Planners
 - Licensed Professional Engineers



Annual Returns

- **Commencing April 1, 2015:**
 - Will receive an annual return from ISC 1-2 months before due date
 - Regs s. 45.1(1)(a) - anniversary month is the month on which the corporation was incorporated or as set by Director
 - Regs s. 45(1)(b) – due date is the last day of the month following anniversary month
 - Regs s. 45(5) - Director can designate another anniversary month if the corporation satisfies the director that it is reasonable and appropriate to do so



Annual Returns

- Form MM (Annual Return) requires three pieces of information:
 - Address for Service
 - Director information
 - Submitting Party information
- Form DD (Change of Address or Change of Directors) only required to complete if something has changed
 - Includes detailed instructions with it
 - All corporations will have to include Form DD in first annual return because director information not currently filed with Corporate Registry



Bylaw Changes

- **Making, amending or repealing bylaws:**
 - All bylaws except sector:
 - Act s.46(1) & (2) - Require a special resolution
 - Act s.47(1)(f.1) – May pass bylaws that allow the corporation to maintain all or any portion of a unit
 - Sector
 - Act s. 47.1(4) - Require unanimous approval or 80% approval with notice to those not voting or voting against to advise of ability to apply to court



Bylaw Changes

- **Act s. 2(1)(z) - Special Resolution:**
 - A resolution approved by a majority of not less than 2/3rds of the persons entitled to vote
 - Includes all persons entitled to vote regardless of whether they attend the meeting or not
 - Can be done by:
 - Voting at a meeting
 - Signatures
 - Combination voting at a meeting and signatures



Bylaw Changes

- **Act s. 46(3) - Filing bylaws:**
 - No effect until filed with the Corporate Registry at Information Services Corporation
 - Corporate Registry reviews bylaws for key features and files
 - Filing does not make valid an otherwise invalid bylaw
 - If nothing filed, the initial bylaws prescribed in the regulations apply



Standard Unit Description

- **Regs s. 11.1 – Description of Standard Unit**
- **If available/newer condos:**
 - Description of any standard items that were initially provided to purchasers by developers on plan
- **If not available/older condos:**
 - Agree to what should be considered standard items
 - Include in bylaws using special resolution



Insurance

- **New insurance requirements:**
 - Act s. 65 – Duty to ensure
 - Must carry insurance on bare land units developed as apartments, row houses or townhouses
 - Must carry director and officers' liability insurance
 - Standard unit description to assist in determining division of insurance liability between owner and condo corporation



Minutes

- **Requirements:**
 - Act s. 39(2)(e) - Keep minutes of board proceedings
 - Act s. 39(2)(f) - Keep minutes of proceedings at general meetings
 - Regs s. 39.2(1)(c) – Developer to provide minutes for preceding year
 - Standard Bylaws s. 3(b)(ii) & s. 17(1)(f) – Make meetings minutes available to owners
 - Estoppel Form GG - Disclose minutes for the preceding year to a purchaser



Minutes

- **What does disclosure include:**
 - Regs s. 39.2(2)(a) & Standard Bylaws s. 3(b)(ii)
 - Proceedings of any general meetings of the corporation or board
 - All appendices or other attachments that are referenced in minutes
- **How to disclose:**
 - Regs s. 39.2(2)(b), Standard Bylaws s.3(b)(ii) & 3.1
 - Do not disclose the identity of any individual unit owner to whom the minutes relate
 - By paper, electronic or other format acceptable to the purchaser



Short Term Rentals

- **Added in 2014:**
 - **Act s. 2(1)(y.3) - Short-term Rental Management Pool**
 - A rental management agreement pursuant to which one or more units will be rented out for periods of less than one month
 - **Regs s. 62.3(1) - Require owner to provide to the corporation**
 - Notice at least 30 days in advance of intention to rent or cease renting for periods of less than one month
 - Contact information for the manager of the pool who will provide the name of the tenant on request
 - **Form GG s. 29 - Require corporation to provide to purchasers**
 - Notice of plans or agreements in estoppel certificate



Short Term Rentals

- **Act s. 76 - Renters shall not**
 - Cause damage to the property
 - Contravene the bylaws of the corporation

- **Act s. 77 - Deposit**
 - Corporation may require a damage deposit from owner
 - Cannot exceed maximum amount pursuant to *The Residential Tenancies Act, 2006*
 - Use to maintain, repair or replace property damaged, destroyed lost or removed by renter



Short Term Rentals

- **Bylaws**

- Act s. 44 (2) - No bylaw shall prohibit or restrict the lease of units
 - Cannot restrict the owner's property rights
 - A bylaw that attempted to prevent the rental of units would contravene the Act
- Act s. 47(2) - could consider bylaws to better manage short term rentals remembering that no bylaw shall be passed that is contrary to the Act or the condo plan



Dispute Resolution – Courts

- **Condominium Corporation**

- Act s. 98 – to recover sums expended for repairs to owner’s units or work done in complying with local authority
- Act s. 99 – regarding bylaw enforcement in Small Claims Court

- **Owners**

- Act s. 99.1 – to direct condo corporation or board to fulfill its duties
- Act s. 99.2 – oppression remedies to determine if owner or other is being treated unfairly



Dispute Resolution

- **Other Remedies**
 - Act s. 99.3 – Nothing in Act restricts other remedies available
 - Act s. 100 – Arbitration
 - Act s. 101 – Administrator appointed by courts



Dispute Resolution

- **Assistance**
 - Small Claims Court -
<http://www.sasklawcourts.ca/index.php/home/provincial-court/small-claims-court>
 - Hire a lawyer
 - Hire a mediator or alternate dispute practitioner
 - ADR Institute of Saskatchewan
 - Conflict Resolution Saskatchewan
 - Dispute Resolution Office, Ministry of Justice
 - Office of Residential Tenancies
 - Deposit disputes



Estoppel Certificate Changes

- In response to feedback that it was not user friendly and not being completed properly
- Format change to Form GG
 - From statement as to what was required to a question and answer format
 - Sorted into categories to keep related questions together
- Majority of disclosure requirements have not changed



Estoppel Certificate Changes

- **Removed:**
 - Requirements to note appeals to Saskatchewan Municipal Boards
 - Condo Apportionment Committee was phased out
 - Received no applications since 2003



Estoppel Certificate Changes

- **Common Expense and Reserve Fund:**
 - s. 8 - Advise if condominium was converted from a previous use as an apartment, tenement or flat
 - If yes, reserve fund study has to be attached at no additional cost
 - If no, reserve fund study is still available for a fee
 - s. 9 - Confirm liability insurance by person completing reserve fund study



Estoppel Certificate Changes

- **Financial Statement:**
 - s. 12 - Advise when financial statements were last audited, reviewed or why not
- **Parking:**
 - s. 16 - Advise if parking space or parking unit is included
 - s. 17 – Advise if any additional parking is included or available for rent
 - s. 18 – Advise if there are any exclusive use areas
 - s. 19 – Advise of charges for the use of parking or other exclusive use areas



Estoppel Certificate Changes

- **Insurance:**
 - s. 21 - Advise if there is a standard unit description and attach if there is one
- **Bylaws:**
 - s. 25 - Advise that bylaws are in good standing and filed with the Corporate Registry



Estoppel Certificate Changes

- **Agreements:**
 - s. 29 - Advise if there are short term rentals of less than one month and provide particulars
 - s. 30 - Advise if there are agreements with other condominium corporations and provide copies of any existing agreements
- **Meetings and other Proceedings:**
 - s. 31 - Attach copies of minutes
 - s. 34 - Advise of annual return status



Estoppel Certificate Changes

- **Property:**
 - s. 37 – Advise if the property is managed by a property manager and if so, who
 - s. 38 – Advise if use of any common property is prohibited
 - s. 39 – Advise if the corporation owns other real property outside of condo plan



Estoppel Certificate Changes

- **Development:**
 - s. 40 – For condos still under development, provide completion information
 - s. 41 – Provide copies of any final inspection reports detailing compliance with zoning, building and fire code requirements
 - s. 42 - Indicate whether the unit factors were apportioned for each unit by area of unit and explain if it is apportioned differently



Estoppel Certificate Changes

- **General:**
 - Provide the name and contact information for the person completing the certificate in case of questions



Questions?

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