

# Phase II Changes

Condominium Property Act and Regulation  
Presented by SVR Lawyers

# How Enacted

- ▶ *Condominium Property Amendment Act* was passed in December 2014. In force in 3 stages:
  - ▶ **Phase I Developer Provisions** - announced October 12, 2017. Came in to effect as of January 1, 2018 and April 1, 2018
  - ▶ **Phase II Governance Provisions** - announced December 3, 2018. Come into effect July 1, 2019 and some portion comes into effect January 1, 2020.
  - ▶ **Phase III Tribunal and RECA** - TBD
- ▶ <https://www.alberta.ca/assets/documents/condominium-property-regulation.pdf>

# How does Phase II affect existing Bylaws?

- ▶ Current bylaws are still valid unless they conflict with the Act and Regulations.
- ▶ New default bylaws - now “Schedule 4” bylaws in the Regulation
- ▶ Corporation has until Jul 1, 2020 to amend Bylaws by Ordinary Resolution to amend any bylaws that conflict with changes.

# Meeting of the Owners - Pre AGM

- ▶ 60 day “save the date” AGM notice must contain:
  - ▶ Call for agenda items and deadline to submit
  - ▶ Specific statement that an agenda item must include:
    - ▶ A description with and clarity for the purposes of a vote
    - ▶ Any other information needed to consider the item
  - ▶ Specific statement that owners will decide the contents of the agenda by majority vote at the beginning of the AGM

# Meeting of the Owners - Pre AGM

- ▶ 14 days AGM Notice must contain:
  - ▶ All proposed agenda items, proxy form, last AGM minutes, audited financials, annual report on reserve fund, current budget and all board minutes for since last AGM
  - ▶ \*\*For first AGM after July 1, 2019, AGM notice must also contain a note stating that all former proxies are invalid
  - ▶ Add 7 days for mail or 24 hours for email (if email provided)
  - ▶ EGMs - need proposed wording of any resolution

# During and After the AGM

- ▶ Beginning, owners will vote on which “added” agenda items should be discussed
- ▶ Agenda must have a section for Owners to overturn any Board rules or policies
- ▶ Record votes
  
- ▶ Within 30 days, must provide AGM minutes (draft) and list of names and addresses of board members
- ▶ AGM Minutes must include results of all votes (record depends on type of vote)

# Proxies

- ▶ Proxies issued before July 1, 2019 are not valid *IF they do not comply with new requirements*
- ▶ Anyone can be a proxy, except
  - ▶ A minor
  - ▶ A business, company or corporation (has to be an individual)
  - ▶ Manager or employee of the Condo Corp except for quorum
- ▶ Electronic or hard copy.
- ▶ Valid for 6 months unless owner notes an earlier expiry date.
- ▶ Condo Corp can make procedural bylaws or rules on use of proxies (i.e. proxy must be handed in by a certain date to be confirmed as valid)

# Proxy Format

- ▶ Invalid unless has all of the following:
  - ▶ Name & unit number of the person granting the proxy.
  - ▶ Name of the individual who is the proxy holder
  - ▶ Date given
  - ▶ Signature of owner
  - ▶ Any and all limitations



# Co-Owner Voting

- ▶ Generally - If only 1 Owner show up then that owner has 100% of the vote. If 2 or more show up, the only one can vote. If they disagree, no vote unless they request a poll and then UF's are divided among percentage of ownership
- ▶ Complicated when proxies are involved
- ▶ Tenants in Common vs Joint Tenants - Need to pull titles

# Electronic Updates and E- Voting

- ▶ Only if allowed in the bylaws. Need security and authentication requirements
- ▶ Jan 1 2020
  - ▶ CC MUST send e-notices if the Owner wants that (suggest FORM)
  - ▶ Owners must be able to keep them permanently (for example, sent as a pdf or a word document, but cannot be sent as a webpage link)
  - ▶ Deemed received 24 hours after it was sent.

# Budget & Special Assessments

- ▶ In addition to sending with AGM package, budgets must be sent out 30 days before the start of the fiscal year
- ▶ Revisions must be sent out as soon as possible
  
- ▶ Board resolution for special assessment (now Special Levy) must contain specific items:
  - ▶ Purpose, amount etc
- ▶ Board must inform owners right after it is passed
- ▶ Wording of when it is due changed

# Records and Information - Owner Requests

- ▶ In addition to all previous documents, an owner can also request
  - ▶ Any action commenced against the corporation of which the corp has been served, including the amount claimed (7 years?)
  - ▶ Management agreement (current or past?)
  - ▶ Loan disclosure statement with details of the loan and payments
  - ▶ All approved board minutes and draft or approved AGM Meeting Minutes (any fiscal year)
  - ▶ Insurance policies
  - ▶ List of Rules/Policies
  - ▶ List of Board members and addresses

# Records and Information - Cost

- ▶ Documents must be given within 10 days of request.
- ▶ \$10 for most documents
- ▶ Rush fees max of \$30 (3 business days) for specific documents only (Information Statements and Loan Disclosure docs)
- ▶ \$100 for an Estoppel Certificate
- ▶ Can't bill for docs required to be sent (i.e. AGM packages)
- ▶ Long retention periods (only have to retain docs that you could access as of Dec 31, 2018)
  - ▶ increased developer disclosure
  - ▶ Manager/board has 30 days to hand over documents

# Reserve Fund Study

- ▶ If done by developer before board turnover, developer has to use “arm’s length” party.
- ▶ Also can’t be director, officer, employee, manager of corporation, an owner, occupant or spouse, partner, parent or child
- ▶ 30 years
- ▶ Methods they must follow:
  - ▶ Onsite inspection
  - ▶ Interview of board members, managers and employees
  - ▶ Review relevant docs (plan, construction docs, maintenance records)
- ▶ Study must contain a statement that they are not disqualified under 21.2 (arm’s length)

# Reserve Fund Study

- Annual report on reserve must include:
  - amount of reserve fund for last year and projected for current year
  - payments in/out of fund for last year and projected for current year
  - repaired/replaced depreciating property for last year with cost and to be repaired/replaced for current year with est. cost of same

# Enforcement - Violations and Sanctions

- ▶ Fines for breach of bylaw only
- ▶ Can't fine for breach of Rule or Policy (non-monetary?)
- ▶ Can't limit "use" of unit by Rule of Policy
- ▶ Can't be delegated. Only Board can issue it
- ▶ Requires written notice (min 3 days) and must include specific info
  - ▶ Unit number, Name of offender (if known), Section of bylaw and rule not complied with, Date and time of occurrence, max monetary sanction, corrective action and deadline



# Enforcement - Violations and Sanctions

- ▶ If Board not satisfied with action or response, then can fine “offender” or owner or tenant
- ▶ Notice of Sanction must contain:
  - ▶ Amount, instruction to pay and deadline for payment
  - ▶ If not a monetary sanction description and date and time that it is in effect
  - ▶ Reasons for sanction
  - ▶ Date of board resolutions to issue it
- ▶ If a Tenant is fined the Owner must be notified

# Enforcement - Violations and Sanctions

- ▶ Residential Units \$200 for 1st /week \$500 for 2nd and subsequent/week, max \$2700
- ▶ Commercial Units \$1000 for 1st/week, \$2500 for 2nd and subsequent/week, max \$13,500

# Board Rules or Policies

- ▶ Have to be issued to owners 30 days (plus notice) before in effect (to unit and to non-resident owners)
- ▶ Can be immediate if safety or security concern
- ▶ \*\*\*\*Have until Sept 29, 2019 to send out current list of Rules and Regs to all owners and occupants or “invalid”
- ▶ Rules cannot restrict “use” of units. “Use” restriction has to be in a bylaw
- ▶ Owners can rescind by Ordinary Resolution

# Standard Insurable Unit - 2020

- ▶ Insurance disputes
- ▶ What is standard? What is an improvement/betterment?
- ▶ Pass by special resolution (as a bylaw), ordinary resolution or Board resolution (if by Board resolution, it has to be ratified at the next AGM)
- ▶ Filed at LTO
- ▶ Regulation sets out the list of items that need to be addressed - see. s.61.1(3)
- ▶ can be different “classes” of unit - i.e. commercial vs residential, townhouse vs apartment style which may have different unit descriptions
- ▶ What if not passed?? Corp SHALL pass Standard Unit Definition

# Insurance Requirements - Jan 2020

- ▶ Corp has to insure:
  - ▶ Residential Units - replacement value of “units, fixtures and finishing” (to degree determined by Standard Unit Def.) but not “improvements” to units
  - ▶ Parking and Storage - units, fixtures and finishing's as provided to purchaser by developer
  - ▶ Developer units - insured to how they existed at time of registration of plan

# Insurance - Notice to Owners - Jan 2020

CC Must notify Owners of Changes to:

- ▶ standard insurable unit description
- ▶ amount of insurance obtained with respect to the owner's unit
- ▶ name of the CC's insurer.
- ▶ amount of deductible (current);
- ▶ replacement value of coverage (current);
- ▶ any new exclusions (current)

# Repairs to Units - Jan 2020

- ▶ CC responsible for repairing the parts of a Unit that they insure. If they don't insure it, they don't have to repair it
- ▶ Owner is responsible for other repairs not covered by CC insurance - such as improvements
- ▶ Repairs must be made according to the standard insurable unit description *unless*:
  - ▶ the owner has insurance that will pay for the improvements; or
  - ▶ owner will pay the difference out of pocket
  - ▶ in either case above, Corp responsible to repair unless it agrees otherwise with owner
- ▶ Corp can still do owners' repairs if a) urgent, b) jeopardizes other people or property or c) gives reasonable notice BUT.....

# Recovery of Deductible/Charge Backs - Jan 2020

- ▶ Max \$50,000 *as a contribution*
- ▶ Must pass a resolution to charge back
- ▶ If the damage *originated* in their unit or exclusive possession area
- ▶ NOT if damage a result of:
  - ▶ Construction defect
  - ▶ Negligence of CC or anyone else
  - ▶ normal structural deterioration of the Common Property or the Managed Property



# Fidelity Bond - Manager and Board Members -Jan 2020

- ▶ CC must purchase fidelity bond
- ▶ If a Board member or Property Manager defrauds or steals from the CC.
- ▶ Amount based on budget and reserve fund
  - ▶ Sum of reserve balance at start of year
  - ▶ Max balance of operating account during previous 12 month
- ▶ Amount of bond must be reviewed at least once every 2 years (conflicts with above??)

# Caveat Fees

- ▶ Only “legal costs and disbursements and costs of registration” can be added to caveat
- ▶ Can’t exceed the amount owing (i.e. if caveat for \$1000 in arrears, legal fee, disbursements and registration cannot exceed \$1000)
- ▶ Cannot caveat for fines unless you have a judgement

# Rental Deposits

- ▶ \$250 max for leases of 6 months or more
- ▶ \$1000 max for leases of less than 6 months
- ▶ Current lease, Condo Corp can keep the current deposits until the end of “tenancy”
- ▶ Can collect as a “contribution”
- ▶ If use it, have to tell owner what is was used for (in detail)

# Questions?

- ▶ Link to new Act: [http://www.qp.alberta.ca/documents/Acts/2014CH10\\_UNPR.pdf](http://www.qp.alberta.ca/documents/Acts/2014CH10_UNPR.pdf)
- ▶ Link to New Reg: <https://www.alberta.ca/assets/documents/condominium-property-regulation.pdf>
- ▶ Link to Government's Webinar: <https://www.youtube.com/watch?v=eLdaZOkJsC8&feature=youtu.be>