

Phase II Changes

Condominium Property Act and Regulation
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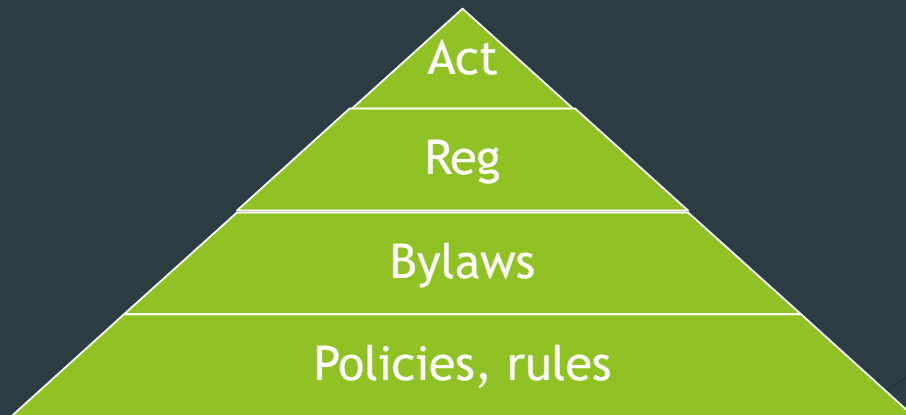
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How Enacted

- ▶ *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. Paused. Re-announced Nov 30. Came into effect January 1, 2020.
 - ▶ **Phase III Tribunal and RECA** - TBD

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Do we need to Update our Bylaws?



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Do we need to Update our Bylaws?

- ▶ Bylaws valid unless they CONFLICT with the Act/Reg
- ▶ If want to update:
 - ▶ **Ordinary Resolution** until Jan 1, 2021 but only for CONFLICTING bylaws
 - ▶ **Special Resolution** if want to move policies to bylaws etc

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Meeting of the Owners - Pre AGM

- ▶ NO CHANGES!
- ▶ 60 day “save the date” trashed!

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Meeting of the Owners - Pre AGM

- ▶ 14 days AGM Notice must contain:
 - ▶ proxy form, last AGM minutes, financials, annual report on reserve fund, current budget
 - ▶ *First AGM after Jan 1, 2020, AGM notice should tell owners former proxies could be invalid
 - ▶ Add 7 days for mail or 24 hours for email (if email provided)
 - ▶ EGMS, now SGMS (already in effect)
 - ▶ SGM notice needs to include purpose of meeting and proposed wording of any resolution
 - ▶ 15%
- ▶ Budgets have to be sent 2x - with AGM package and 30 days before fiscal year

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During and After the AGM (s.20.5)

- ▶ During AGM - Record votes
- ▶ Within 60 days, must provide owners with:
 - ▶ AGM minutes (or draft) and
 - ▶ results of all votes
 - ▶ OR- result
 - ▶ SR - # of people + unit factors in favor/who did not vote in favor
 - ▶ Election - #of vote in favor of each candidate

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During and After AGM

- ▶ Don't destroy the ballots!

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Records and Information

- ▶ Schedule 3 of the Reg
- ▶ Long list with mandatory retention periods

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Records and Information - Owner Requests

- ▶ Owner access to information s. 44 Act, s. 20.52 Reg
- ▶ New
 - ▶ 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 AGM Meeting Minutes (any fiscal year)
 - ▶ Insurance policies
 - ▶ List of Rules/Policies
 - ▶ Text of ordinary and special resolutions and voting results (if not by show of hands)
 - ▶ All professional reports, including professional engineers unless obtained by counsel for litigation**

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Records and Information - Cost

- ▶ Must be provided within 10 days
- ▶ Rush fees (3 days excluding Sunday and holidays)
- ▶ Cost:
 - ▶ \$10 for most documents/\$30 rush or .25 per page if +40
 - ▶ Information Statements \$100/\$150
 - ▶ Estoppel Certificate \$200/\$300
- ▶ Can't bill for docs required to be sent (i.e. AGM packages)
- ▶ Can contract with 3rd party provider

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Proxies

- ▶ 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
- ▶ CC can make procedural bylaws or rules on use of proxies (i.e. proxy must be handed in by a certain date)

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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 (electronic?)
 - ▶ Any and all limitations
- ▶ Also invalid if older than 6 months

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Co-Owner Voting

- ▶ Under review
- ▶ For now - look at the bylaws

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Electronic Updates and E- Voting

- ▶ E-voting section removed

- ▶ Email Notices
 - ▶ CC MUST send e-notices if the Owner wants email notices
 - ▶ Emailed docs must be able to be “indefinitely retained”
 - ▶ Deemed received 24 hours after it was sent (*mail 7 days)

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Special Levies (Special Assessment)

- ▶ Board resolution for Special Levy/Assessment must contain specific items:
 - ▶ Purpose, amount, date must be paid etc
 - ▶ Board must inform owners right after it is passed
- ▶ Limits on Special Levies (s.39.1(2))
 - ▶ Unexpected or urgent maintenance, repair or replacement
 - ▶ Cover unexpected shortfalls
 - ▶ Increase RF balance to meet reserve fund plan
 - ▶ Capital improvement (if have SR)
 - ▶ Satisfy a judgement

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Special Levy/Reserve Fund Study

- ▶ Still need SR for using reserve funds for capital improvement
- ▶ Act clarifies what a “capital improvement” is NOT
 - ▶ NOT the replacement of existing real and personal property of the corporation, the common property or managed property with
 - ▶ (i) the contemporary equivalent of an obsolete property, or
 - ▶ (ii) a lower cost equivalent of the existing property;
 - ▶ NOT any other replacement prescribed by the regulations
 - ▶ Reg (s.28) - NOT a repair to or replacement of depreciating property that is carried out by a corporation if that repair or improvement is a matter that was included in the current reserve fund report that was prepared and submitted to the corporation

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Reserve Fund Study

- ▶ Qualifications - 21.1 (engineer, technologist, architect, appraiser, certified reserve fund planner...etc)
- ▶ Needs to be “arm’s length”
 - ▶ Can’t be director, officer, employee, manager of corporation, (or spouse, partner, parent or child of those), an owner, occupant
- ▶ 30 years
- ▶ Methods they must follow:
 - ▶ Onsite inspection
 - ▶ Interview of board members, managers and employees
 - ▶ Review relevant docs (plan, construction docs, maintenance records)

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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 for current year
 - repaired/replaced depreciating property for last year with cost and projected to be repaired/replaced for current year with est. cost of same

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Borrowing

- ✓ Borrowing now expressly provided for in *Act* and *Regulations*
- ✓ If greater than 15% of revenues or prior maximum approved amount, then must be approved by Ordinary Resolution (or Special Resolution if Bylaws require)
- ✓ Resolution must specify a max
- ✓ NOTE: Loan disclosure requirements for owners, purchasers, mortgagees and their solicitors (s.20.57 of Regulations)

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Enforcement - Violations and Sanctions

- ▶ Fines for breach of bylaw only
- ▶ No fine for breach of Rule or Policy (non-monetary?)
- ▶ Can't caveat for fines
- ▶ *Decision* to issue fine can't be delegated
- ▶ Have to have fining power in your bylaws
- ▶ Two Step Process

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Enforcement - Violations and Sanctions

- ▶ STEP 1: Warning Letter
 - ▶ Unit number
 - ▶ Name of offender (if known)
 - ▶ Bylaw breached (or rule if non monetary)
 - ▶ Date and time of breach
 - ▶ Max sanction
 - ▶ Corrective action
 - ▶ Deadline
- ▶ At least 3 days to respond

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Enforcement - Violations and Sanctions

- ▶ **STEP 2: Sanction Notice** (Need board resolution)
 - ▶ Amount (If non monetary - description and date and time that it is in effect)
 - ▶ instruction to pay
 - ▶ deadline for payment
 - ▶ Reasons for sanction
 - ▶ Date of board resolutions to issue it
- ▶ If a Tenant is fined the Owner must be notified

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Enforcement - Violations and Sanctions

- ▶ **Residential Units**
 - ▶ \$500 for 1st/1st week
 - ▶ \$1000 or 2nd/2nd week

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Rules or Policies

- ▶ 30 days notice before in effect (to unit and to non-resident owners)
- ▶ Immediate if safety or security concern
- ▶ Have until March 31, 2020 to ensure occupants and owners “receive” a copy.
- ▶ Can’t restrict “use” of units
- ▶ Owners can rescind by Ordinary Resolution

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Standard Insurable Unit

- ▶ What is an improvement and betterment?
- ▶ STEP 1: do bylaws require CC to insure I & B's?
 - ▶ If yes -> no action needed.
 - ▶ If no -> need to establish a SIUD
- ▶ Corp only required to insure to the standard.
- ▶ By board resolution (ratified at AGM), ordinary resolution or special resolution
- ▶ Filed at LTO
- ▶ Different “classes” of unit may have different SIUDs
- ▶ *What if not passed??*

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Standard Unit Definition

List of items that need to be addressed in s.61.1(3)

- a) flooring, wall coverings and ceiling covering;
- b) Electrical lines and fixtures, including lighting fixtures;
- c) Plumbing lines and fixtures;
- d) Natural gas lines and fixtures;
- e) Fixtures with respect to air exchange and temp control
- f) Non boundary walls and doors and windows ni non boundary walls
- g) Cabinets and countertops
- h) Non chattel appliances

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Insurance Requirements

- ▶ Corp has to insure:
 - ▶ Units to replacement value
 - ▶ Residential Units - replacement value of “units, fixtures and finishing” (to degree determined by SIUD) but not “improvements” to units
 - ▶ Parking and Storage - units, fixtures and finishing's as provided to purchaser by developer
 - ▶ Developer units - to how they existed at time of registration of plan
 - ▶ Commercial Units - units, not fixtures and finishing
- ▶ Bylaws can require owners to purchase deductible insurance
- ▶ CCs insurance can be subject to any reasonable deductible that is agreed to by the corporation and the insurer

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Insurance - Notice to Owners

CC Must notify Owners of Changes to:

- ▶ amount of deductible
- ▶ replacement value of coverage
- ▶ any new exclusions
- ▶ changes to SIUD

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Repairs to Units - Jan 1, 2020

- ▶ If you insure it, you repair it.
- ▶ Repairs must be made according to the SIUD *unless*:
 - ▶ the owner has insurance that will pay for the improvements; or
 - ▶ owner will pay the difference out of pocket
 - ▶ Owner's unit is worse than SIUD
- ▶ Urgent cases:
 - ▶ Corp can still do owners' repairs if a) jeopardizes other people or property b) owners doesn't do it and c) reasonable notice
 - ▶ Owner must pay!

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Recovery of Deductible/Charge Backs - Jan 1, 2020

- ▶ Up to \$50,000 - If the damage *originated* in their unit or exclusive possession area
- ▶ Caveatable if in bylaws
- ▶ 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
- ▶ *What if damage less than deductible?*

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Crime Coverage- Manager and Board Members

- ▶ Fraudulent or dishonest act
- ▶ CC must have for Board member, manager or employee of board
- ▶ Amount - sum of
 - ▶ Reserve balance at start of year +
 - ▶ Operating balance at start of current fiscal year
 - ▶ Other amount in bylaws
- ▶ Review every 2 years

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Collections and Caveat Fees - Jan 1, 2020

- ▶ Can only add:
 - ▶ “legal and other professional fees and disbursements associated with preparing, registering and discharging caveat” +
 - ▶ LTO fees
- ▶ Can't exceed the original amount owing (i.e. if owner is in arrears \$1000 in arrears, all fees, disb, LTO fees can't exceed \$1000)
- ▶ Can't caveat for fines unless you have a judgement

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Rental Deposits - July 1, 2019

- ▶ Greater of \$1000 or one month's rent
- ▶ If exceed above, can retain until unit no longer rented.
- ▶ Can collect as a “contribution”
- ▶ Statement of Account
 - ▶ If use it, have to tell owner what is was used for (in detail)

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Questions?

- ▶ Link to the fact sheets

https://www.alberta.ca/condominium-rules.aspx?mc_cid=a334ad0724&mc_eid=9ef051911d

- ▶ Link to Annotated Reg:

<https://www.alberta.ca/assets/documents/sa-annotated-condominium-property-regulation.pdf>