

On September 1, 2000, changes to the *Condominium Property Act* and Regulation came into effect in Alberta. The Act and Regulation affect condominium owners, buyers, sellers and developers. This tipsheet will give you an overview of the key topics that affect the buyer of a condominium. It does not cover all the special circumstances or unique situations that can arise.

This tipsheet is not a substitute for legal advice. You may want to consult a lawyer who is familiar with condominium property law.

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The Condominium Property Act and Regulation

The *Condominium Property Act* and Regulation outline how condominiums operate and are managed in Alberta. The legislation covers:

- the powers and duties of the corporation and the rights of unit owners

- the division of responsibilities between the corporation and the unit owners
- budget and financial matters
- by-laws, including changing and enforcing by-laws
- reserve funds
- management agreements, rental of units, and insurance
- requirements for annual general meetings and board meetings.

For complete information please read the Act and Regulation which are available on the Alberta Government Services web site www.gov.ab.ca/gs or through the Queen's Printer Bookstore.

What is a condominium?

A condominium is a form of real property ownership. This type of property ownership has two parts: owning your own property to which you get a title, and jointly owning property with other unit owners in the same complex.

Every condominium corporation contains both **condominium units** and any **common property** identified in the condominium plan. A unit is the part of the property owned by the individual. It can be land (bare land units), or the interior of a building, or air space. The condominium plan identifies the exact unit boundaries. The common property is everything in the condominium plan that is not within a unit. (See page 2 for more information.)

Condominiums are more than just residential units. Condominiums may be commercial outlets, resorts/timeshares, and bare land units.

When you purchase a condominium you are buying a single unit within a multiple-unit complex. Some examples of residential condominiums are an apartment within an apartment building, a duplex, a bungalow, or a townhouse.

Condominium corporation

The corporation consists of the owners of all the units in the condominium plan. A corporation is created when the developer registers the condominium plan at Land Titles Office. The corporation is responsible for enforcing its by-laws, and controlling, managing and administering the common property. The board of directors, elected by the owners, carries out these responsibilities on behalf of the corporation. The board reports to the owners at an annual general meeting or at an extraordinary general meeting.

Once you purchase a condominium unit, you are bound by the corporation's by-laws. Specific by-laws can give the corporation the right to impose sanctions, like fines, on owners who fail to comply with the rules. By-laws vary greatly between condominiums. Some for example, may not allow children or pets to live in the complex. Make sure you know what by-laws govern the condominium you wish to purchase.

What you own, what you share

Owning a condominium is not the same as renting an apartment where all the duties and responsibilities of running the building are handled by the building owner and caretaker. In a condominium complex, ownership responsibilities belong to you and all the other unit owners in your condominium corporation.

Before you make an offer to purchase, be sure you understand what is included in the unit and what is considered common property. This information is contained in the condominium plan.

Your unit

When you buy a condominium unit, you acquire title to a space that is often bounded by walls,

floors and ceilings. In a bare land unit, you buy the actual land and anything built on it.

You are responsible for the maintenance, repair, and remodeling of the interior of your unit. Ask if the board must approve your remodeling plans. If the common property or the building structure is affected, the board will need to approve the changes before you make them. Ask for permission in writing and keep a copy of the board's written approval.

Common Property

The common property is identified in the condominium plan. It usually includes space and facilities outside the units, such as hallways, elevators, heating and electrical systems, laundry rooms, recreation rooms and landscaped areas. As the owner of a unit, you also become the partial owner of the condominium's common property. In the case of a bare land condominium this would include such things as roads. You agree to share the expense and responsibility for the repair and maintenance of this property with other unit owners. Your share of the costs is determined by your unit factor.

Unit factor

The unit factor identifies your portion of the joint ownership of the common property. The developer assigns a unit factor to every condominium unit when registering the condominium plan. The sum total of the unit factors for all the units in the plan is 10,000. After September 1, 2000, developers will have to disclose the basis for setting the unit factor. It is important to know the unit factor assigned to your unit because it will affect your condominium contributions and your voting rights.

Exclusive-use common property

You may also lease or have the right to use defined areas of the common property called exclusive-use areas (private access and use), for example, the carport, parking stall or balcony next to the unit. These areas may be identified on the condominium plan or defined in the

corporation's by-laws. The corporation retains the control of these areas.

Check the by-laws to see what exclusive-use areas you can use and what your responsibilities are for those areas, such as maintenance. Ask if you are entitled to the exclusive use of these areas or if the area is shared with the other unit owners. What improvements would you be allowed to make? If you have any questions, check with the board, manager, or developer before you buy.

Doors and windows

Before September 1, 2000, the doors and windows were considered to be part of the condominium unit unless the condominium plan said otherwise. In the new legislation all doors and windows of a unit that are located on the exterior walls of the unit become part of the common property, unless the condominium plan explicitly shows they are part of the unit. This includes the door and window frames, assembly components, and the door and window glazing. It does not include the door or window casings, trim or moldings.

Corporations affected by this change will have two years (until September 1, 2002) to pass a special resolution to amend the plan to state that the doors and windows are part of the unit, not the common property.

Regular condominium expenses

Taxes

You will pay municipal taxes on your condominium unit. The current taxes should be noted on the real estate listing agreement. It's a good idea to double check with the municipal government to confirm the taxes.

Insurance

Insurance on the entire structure of the condominium development is the responsibility of the condominium corporation. (This is not always the case for bare land complexes.) The corporation must have replacement cost value insurance on the property for all perils covered by standard insurance policies. Check the policy

for exclusions. There must also be insurance for any liability incurred by the board or corporation when carrying out their duties and responsibilities.

You will need to buy your own insurance to cover your personal property, personal liability, and perhaps any improvements made to your unit. Check the by-laws to see if improvements are covered under the corporation's policy. Ask your agent for more information. The condominium corporation can give you a certificate of insurance that provides your agent with information about the extent of the corporation's insurance policy.

Condominium contributions

As a condominium owner you'll pay a yearly or a monthly condominium contribution often referred to as a condominium fee. A condominium corporation needs money to meet its financial obligations – paying for insurance premiums, snow removal, grass cutting, repairs to common property, reserve fund, etc. The main source of income for a condominium corporation is the money paid by the owners in their condominium contributions.

The board sets contributions by taking into consideration the budgeted needs of the corporation and the unit factors (for each unit). Corporations can now change the formula for allocating condominium contributions, if the owners pass a special resolution to amend the by-laws. Make sure you know how your condominium contributions are calculated. Most condominium contributions are paid monthly. Be aware that condominium contributions can and do go up!

If the corporation does not have enough money in the reserve fund (see page 4) to cover significant repairs or incurs other large unexpected expenses, the board may require each condominium owner to pay a special assessment to cover the costs. However, the requirement for condominiums to do a reserve fund study and to develop a reserve fund plan

should significantly reduce the need for special assessments for repairs and maintenance.

Condominium corporations can place liens against a unit's title if contributions are not paid. They can charge interest on unpaid contributions. You could be responsible for the unpaid contributions – yours and the previous owner's - and could lose your title if the corporation takes foreclosure action in extreme cases to collect them. An estoppel certificate identifies any outstanding contributions.

Estoppel certificate

Before you buy a condominium unit, get an estoppel certificate from the corporation. You may have to pay a fee for obtaining the certificate. The estoppel certificate tells you:

- the amount of contributions assessed to that unit
- whether the contribution is to be paid monthly, yearly, etc.
- whether the previous owner has paid his/her share of the contributions and what remains unpaid
- the amount of any interest owing on any unpaid condominium contributions.

Your lawyer can deduct any unpaid contributions from the purchase price.

Ask about the reserve fund

As buildings age they need to be repaired and maintained. This also applies to other common property such as the exterior of the building, asphalt, underground utilities or services and landscaping. As with all other expenses of the corporation, the owners must pay for the repair or replacement costs.

By September 1, 2002, all condominium corporations registered before September 1, 2000 must have completed a reserve fund study and approve a reserve fund plan to establish and maintain a reserve fund. Condominiums developed after September 1, 2000, have two years from the time they are completed to do a reserve fund study and approve a plan. Reserve fund studies must be conducted every 5 years.

Before you buy, ask

- Is there a reserve fund?
- How much money is in the reserve fund?
- How much of the condominium contribution goes to the reserve fund?
- Has a reserve fund study been done, and if so, when?
- What major expenses, if any, are being considered in the reserve fund plan?
- How much money will be needed to establish and or maintain the fund to offset future replacement costs?
- How does the board plan to raise those funds – increased condominium contributions, special assessments etc?

Ask for a copy of the reserve fund plan and the annual report. If you wish you can also ask for a copy of the reserve fund study report.

Buying from a developer

The developer has a duty to deal fairly with you when entering into, performing and enforcing the purchase agreement. Before you buy, the developer must provide you with a copy of:

- the purchase agreement
- the by-laws or proposed by-laws
- any management agreement or proposed management agreement
- any recreational agreement or proposed recreational agreement
- the lease, if the land on which the unit is located is leased
- any mortgage or proposed mortgage that may affect the title of the unit
- the condominium plan or proposed condominium plan
- the phased development disclosure statement if the unit is in a phased development.

Before you move in, the developer must also provide an occupancy permit.

If you want to cancel

If you are buying a new unit from a developer, the *Condominium Property Act* allows you to cancel your purchase agreement within 10 days

from the date you signed it, if you did not receive all the required documents at least 10 days before you signed the contract. You are entitled to a full refund within 10 days after the developer has received your written notice to cancel.

Purchase agreement

The purchase agreement must include the condominium plan showing the:

- interior finishing of all common property within the building, and all major improvements
- recreational facilities and other special features
- maintenance equipment for common property.

The purchase agreement must also include:

- the unit factor and how it was set
- the condominium contributions for the unit (or an estimate) based on a reasonable economic basis
- notification of the right to cancel on the front or first page of the document.

Ask about any other questions you have regarding the development and what the developer is offering.

The *Condominium Property Act* says that when you purchase a unit in a condominium complex not yet completed, the developer has certain responsibilities. The developer must hold your funds in trust until construction of the unit and common property is substantially completed. You must receive your title before the money is taken out of the trust fund. It is important to consult your lawyer before you sign the purchase agreement.

If the development is covered by an approved purchaser's protection program, other rules may apply. Examples of these programs are the Alberta New Home Warranty Program and the National Home Warranty Programs. For more information contact the warranty program provider. (See For more information.)

Purchasing a unit in a phased development

Sometimes condominiums are developed in phases. If you are buying a unit that is in a phased project you should obtain a copy of the phased development disclosure statement that is 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
- the extent to which the developer will contribute to the common expenses during the development of each phase and the entire project
- the method to determine the allocation of administrative costs in each phase and for the entire project
- the basis for allocating unit factors
- the effect on the owners' contributions for administrative expenses and the corporation's budget if future phases are not completed.

Purchasing a previously-owned condominium

When you buy a previously owned condominium, you are not protected by the disclosure and trust provisions of the *Condominium Property Act*. It is up to you to get the necessary documents and information. You may want to seek legal advice.

The condominium corporation must provide you with the information listed in Section 36 of the *Condominium Property Act* within 10 days of your written request. The corporation may charge a reasonable fee for these materials.

Documents

When you buy your condominium from the owner of the unit, you should obtain and examine the following documents **before** you make your offer to purchase.

You will need to know the condominium plan number (letters and /or numbers) to obtain these documents from a registry agent. Plans registered after 1975 have a seven-digit number. Those registered before 1975 have a combination of letters and numbers. They may also have names such as "Whispering Pines".

The seller, Land Titles Office, a registry agent, the real estate agent, the condominium board or manager, or your lawyer may be able to help you obtain the following documents.

Alternatively, you could make your offer to purchase subject to obtaining the documents and the purchaser being satisfied with their contents.

- the condominium plan
- the condominium plan additional document sheet
- the certificate of title for the unit
- information about any restrictive covenants
- the condominium by-laws
- the phased development disclosure statement, if any.

In addition, you need to obtain:

- an estoppel certificate (See Estoppel certificate page 4.)
- any governing policies of the condominium
- the particulars of any legal action or claim against the corporation
- details of any written demand made upon the corporation for \$5,000 or more
- a copy of the corporation's current budget
- a copy of the most recent financial statement and year-end statement
- a copy of the latest minutes of general meetings of the corporation and of the board
- details of any management, recreational and lease agreements
- a copy of the approved reserve fund plan and annual report, including a statement

identifying the amount of the capital reserve fund

- a statement setting forth the unit factors and the criteria used to determine the unit factor
- the particulars of any post tensioned cables that are located on the property
- information on any structural deficiencies that the corporation has knowledge of at the time of the request in any of the buildings on the condominium plan
- a copy of the corporation's certificate of insurance, showing the amount of insurance on the complex
- a copy of any lease agreement or exclusive use agreement with respect to the possession of a portion of the common property, including a parking stall or storage unit.

As with the purchase of any building, it would be wise to have a building-inspection report on the unit, if available, or to make your offer to purchase conditional on obtaining a satisfactory report.

Finally, make sure you also ask for:

- the corporation's most recent newsletter
- the names of the corporation's current board of directors and manager, if any, along with contact numbers.

Financing your condominium purchase

A condominium unit is financed the same way you would finance any other property purchase. You'll probably get a mortgage through a financial institution and make a monthly payment of principal and interest.

If you are buying a new condominium from a developer, you need to find out if there is a "blanket mortgage" on the development. Seek legal advice for a complete explanation of a blanket mortgage and how it might affect you as an owner.

An informed condo buyer is a wise condo buyer!

Be sure you know the answers to these questions before you buy:

- What is the development's history? For example, are there any persistent problems with the plumbing or other utilities?
- If you are buying from a developer, what work remains to be done on the condominium development? Does your purchase agreement identify a completion date?
- Is there an operating surplus or deficit?
- What is the current financial status of the corporation? Ask for a copy of the year-end financial statement, the current financial statement, the current budget, and evidence of adequate insurance coverage.
- Does the common property appear to be well maintained and managed?
- Have any transactions taken place affecting the common property such as transfers, leases or re-division of the units?
- Do the unit owners own the recreational facilities as part of the common property, or does the condominium corporation lease them? If they are owned, are they used by anyone besides the unit owners? If they are leased, what are the terms?
- How many of the units are unoccupied? Rented?
- Are you personally responsible for any maintenance duties?
- Are there any restrictions in the by-laws governing your use of your unit? Can you have pets? Is there an age restriction on occupants in the complex? Can you operate your home-based business from your unit? Can you put up your satellite dish? Can you put in a hot tub? Read the by-laws carefully.
- Are there extra parking stalls for owners? Is there enough visitor parking? Are there restrictions on visitor or owner parking? Can you park your motor home somewhere?

Talk to the people who own condominium units in the complex you are considering. Speak to a director and the manager. They can give you

good information about owning a unit in the complex and about the governance of the condominium corporation.

What you should know about condominium ownership

When you buy a condominium you are buying a certain lifestyle. You may not have the responsibility for shoveling the snow or maintaining the property but you do have responsibilities as an owner who is part of the community. You need to know how condominiums are run, your responsibilities as an owner, and the responsibilities of the board of directors.

How condominiums are run

Every condominium corporation has a board of directors elected by the owners. The by-laws outline how many directors, how often they are elected, and any eligibility requirements. Directors are volunteers (usually owners) who have agreed to take on the responsibility of running the condominium corporation. The board conducts its business by holding regular meetings, usually monthly.

The board is responsible for:

- abiding by and enforcing the Act, Regulation and by-laws of the corporation
- deciding how the condominium is to be managed
- managing, administering and maintaining the common property, including any repairs
- arranging insurance for the corporation
- setting and collecting condominium contributions and dealing with the financial administration of the corporation
- maintaining the capital reserve fund for major repairs and maintenance
- hiring and supervising employees, contractors and any condominium manager or management company
- holding an annual general meeting and reporting to the owners on its stewardship of the corporation.

Owner rights and responsibilities

As a unit owner, your rights and responsibilities will include:

- the right and responsibility to vote in matters presented to the owners for vote
- the right of access to common areas, subject to the by-laws
- the right to obtain information on the management or administration of the corporation
- the responsibility to inform yourself about the Act, the Regulation, the by-laws and policies, and the governance of the condominium corporation
- the responsibility to participate in governing the condominium corporation – to attend general meetings, and serve on the board or on a committee
- the responsibility to maintain your own unit and exclusive use common property
- the responsibility to abide by the Act, the Regulation, policies and the by-laws, and to have your family, tenants and guests do so too
- the responsibility to pay all condominium contributions and assessments on time
- the right to use mediation, arbitration or court action to resolve disputes with the developer, corporation, the board or other owners
- the right to challenge improper conduct of a developer, condominium corporation, employee of a corporation, director or other owner using a court process.

Resolving disputes

Be aware that the government can't become involved in disputes between condominium owners, boards or developers. If you have a dispute with the developer or anyone in the complex, speak directly with the person involved to try and resolve the problem. If the conflict involves the by-laws, the Act, the Regulation or the corporation put your complaint in writing to the board of directors. If the matter is not resolved you may have to get legal advice.

Condominium disputes can now be resolved using mediation and/or arbitration, as an alternative to court action. These processes

involve using an objective third party. A mediator helps the parties negotiate their own resolution to the problem. An arbitrator makes a decision after all the parties present their cases.

All those involved need to agree on the process and on a mediator or arbitrator. If they cannot agree on a mediator or arbitrator, the Alberta Arbitration and Mediation Society can appoint one for them. The parties involved pay the costs of the dispute resolution.

If an owner or any person who has a registered interest in a unit believes there has been improper conduct by the developer, a corporation, an employee of a corporation, director or owner, they may apply to the court to resolve the problem (Section 60.1(1) of the Act). An example of improper conduct is non-compliance with the Act, Regulation or the by-laws.

For more information

Alberta Government Services
Consumer and Corporate Services Division
Edmonton: (780) 427-4088
Toll free in Alberta: 1-877-427-4088
www.gov.ab.ca/gs

Tipsheet: *Owning a Condominium*

Registry Agents
Look under "L" in the yellow pages of the telephone book,
Check the list on the Alberta Government Services web site at www.gov.ab.ca/gs

Canadian Condominium Institute, North Alberta
(780) 413-8334
www.cci-north.ab.ca

Canadian Condominium Institute, South Alberta
(403) 242-8145
www.cci-south.ab.ca

Canada Mortgage and Housing Corporation
1-800-668-2642
www.cmhc-schl.gc.ca

Alberta New Home Warranty Program
1-800-352-8240
www.anhwp.com

National Home Warranty Programs
1-800-472-9784
www.nationalhomewarranty.com

Alberta Home Builder's Association
(780) 424-5890
1-800-661-3348
www.alberta-homes.com

Real Estate Council of Alberta
1-888-425-2754
www.reca.ab.ca

Arbitration and Mediation Society
(780) 433-4881
www.aams.ab.ca

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