

THE CONDOMINIUM ACT – SUGGESTIONS FOR IMPROVEMENT

While we didn't receive any new submissions from our members in the past few months, we did come across some recommendations from a report from the Canadian Institute of Actuaries that looked at reserve funds and reserve fund studies across all Provinces and Territories¹. The Executive Summary on pages 4-5 of the report are recommended reading for all condo unit owners and especially for their directors. What follows is a review of the report and some of the highlights.

One key point raised on page 105 of the report is that the refund of contribution to condo owners is not allowed. "All provinces that require a reserve fund, without exception, are clear about contributions made to the reserve fund: they cannot be refunded to any of the condo owners. Instead, they must be used as projected and intended."

The highlight and also the lowlight of the report is on page 53 amongst several mathematical equations

"The conclusion is that no actual amount of money could be held today in a reserve fund and be expected to cover all future costs. That said, there will always be a need for increasing the reserve fund contributions somehow to repair and replace future common elements. Interest earned will never be enough to avoid increasing reserve fund contributions, at least not in the near future."

Those of you with an appreciation for mathematics can work through the equations as I did (just to exercise my old brain cells), but fundamentally, the conclusion is based on the current situation in which interest rates for reserve fund allowable investments are lower than the rate of increase in labour and material rates. Here I was patting myself on the shoulder for finally getting significant amounts into my own Condo Corp (CC) reserve fund and setting up a GIC ladder in the hopes of reducing the need of ever increasing reserve fund contributions (RFCs). Now my hopes are suitably dashed.

That said, the report does make broad recommendations on page 85

- 1. "Minimum annual contribution and reserve fund balance"** - There is a need for all legislation to review the minimum annual contribution and impose a clear threshold of what should be the minimum amount contributed annually to the reserve fund. In the absence of an up-to-date (not older than 3 years) independent reserve fund study, the minimum annual reserve fund contribution should be 1% of the full reconstruction cost of the condo building. Also, the reserve fund balance should never be, at any time, below the amount of deductible for property damage on the condo corporation's insurance policy (possibly several multiples thereof)...

- 2. "Financial cushion for emergency and adverse deviation"**

- Legislation should require condo corporations to hold in the reserve fund a financial cushion that would be above what is required by a reserve fund study. That financial cushion protects against unexpected expenses. It should be high enough to cover emergency repairs and avoid a special assessment, but not so high that condo owners over-contribute for that financial protection."

- 3. "Data"** - The lack of data in this industry requires that condo corporations disclose more information in an annual form administered by a governmental entity. There is a crying need to gather more data on this industry and have a higher degree of transparency. A governmental entity should require condo corporations to complete a standardized form annually to gather relevant information so that the situation in the condo industry can be monitored and adjusted along the way if necessary."

- 4. Education** - There is a need to educate directors and condo owners/buyers on how a condo works. More educational material, mandatory training courses, and continuing refreshers should be created and taught by non-governmental entities, which should be subsidized by provincial governments. A mandatory training course should also be implemented and be administered by a governmental entity for all sitting directors, so that they undoubtedly understand the importance of their roles and responsibilities as well as the consequences of not performing them diligently according to the legislation."

I think internalizing the four recommendations to my own CC is a useful exercise. Firstly, the suggested 1% minimum RFC equates to about \$285 per month per unit for my own condo corporation, which is very close to the amount that was recommended in the Full Funding Model of our recent RFS. Secondly, having a financial cushion in the reserve fund is an excellent idea, not only as a buffer against unexpected expenses and as a hedge against future special assessments, but also to cover our insurance deductible in the case of a major loss. It is also important to take into account when locking funds away in longer term investments such as a GIC ladder. Lastly, the education aspect is not to be understated, not only for condo directors, but for unit owners too. My CC encourages directors to improve their education and we should also start encouraging all of our owners too.

The report contains links to numerous other sources of information. One article in particular is worth reading and starts with "If Your Condominium is Less Than Ten Years Old and You Are Contributing Less Than \$2,000 Per Unit Per Year to Reserve, You Are Almost Certainly Underfunding Your Reserve"²



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Besides the above, there are interesting comparisons amongst the Provinces. For example, on page 21 of the report in *Table 1: Distribution of condos across Canada* (<https://www.cia-ica.ca/docs/default-source/research/2022/rp222024e.pdf>),

- Ontario by far has the highest number of condo units of any Province and the highest number of condo residents, yet BC has almost three times as many CCs (strata) as Ontario and has almost half of all of the CCs in the country.
- Since Manitoba and Saskatchewan also strive for bragging rights, in this regard SK wins for having almost twice as many condo units and condo residents than MB even with a slightly smaller population. However, on page 87, there is a Provincial scorecard for reserve fund related legislation in which MB ranks third while SK ranks 11th.
- Overall, about 15% of Canadians live in condos and there are about 2.0 residents per condo.

In terms of specific recommendations for the Manitoba Condo Act, the Provincial scorecard and analysis starting on page 87 suggests the following two weaknesses need to be prioritized for improvement.

1. The legislation should consider these aspects about minimum required reserve fund contributions:
 - the requirement for a recurring minimum contribution
 - the level of minimum contribution that is appropriate
 - whether the proxy for the calculation of the contribution is suitable
 - different rules for smaller condo buildings
2. The description of the reserve fund should have the following qualities:
 - clear understanding of a reserve fund
 - leaves as little interpretation as possible for the use of the reserve fund
 - define the common elements to be repaired and replaced over time.

All in all it is a very interesting report for those of you that have an interest in reserve funds and reserve fund studies.

ALAN FORBES

Chair, CCI MB Communications Committee

SCORECARD CATEGORY	MB SCORE / MAX SCORE	BEST PROVINCE(S)
Description of Reserve Fund According to the Provinces' Acts and Regulations	1.5 / 5.0	AB, NL, NS
No vote required to use Reserve Fund	1.0 / 1.0	most
Minimum Annual Contribution required to be deposited in the reserve fund	0.0 / 7.0	QC
Frequency and coverage period of a reserve fund study	3.0 / 5.0	ON
Qualifications Required to Perform a Reserve Fund Study	4.0 / 4.0	MB, NL, NS, NB
Circumstances where a condo corporation is not required to conduct a reserve fund study	2.0 / 2.0	MB, AB, ON, QC, NL
Authorized Investment Vehicle for Reserve Funds	4.0 / 4.0	MB, BC, ON, NB

We encourage you to submit suggestions for improving the Provincial Condo Act to us via <https://cci-manitoba.ca/resources/the-condominium-act-suggestions-for-improvement>. We have started posting these 'suggestions for improvement' in our quarterly *Condominium News and Views*. In case you missed the improvement suggestions in the prior editions, have a look at the Fall 2020, Winter 2021 and Spring 2021 editions at <https://cci-manitoba.ca/members-only/newsletter-archive>

The Province has a useful website with a guide to the Act and links to the Act itself, and the associated regulation and various related forms. The website link is <https://www.gov.mb.ca/condo/>. 🍁

¹ *Longevity of Infrastructure – Reserving and Risk Management in Condominium Maintenance in Canada*, Jean-Sébastien Côté, FCIA & Jon Juffs, C.E.T., LCCI, 2022 Canadian Institute of Actuaries <https://www.cia-ica.ca/docs/default-source/research/2022/rp222024e.pdf>

² *Reserve fund planning: Not as simple as it seems.*, Sally Thompson, 2019 Spring CondoVoice <https://cci.ca/resource-centre/view/151>



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