

THE CONDOMINIUM ACT – SUGGESTIONS FOR IMPROVEMENT

When we refer to the Manitoba Condo Act we often use the term “the New Condo Act” but it isn’t really that new anymore - it came into effect in 2015. Many other Provinces have amended their respective Acts in the past few years. Perhaps it is time for us to get ours updated and more importantly get it improved. Towards this end, CCI Manitoba has a section on its website for you to submit suggestions for improving the Provincial Condo Act - here is a link <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 and Winter 2021 editions at <https://cci-manitoba.ca/members-only/newsletter-archive>

For reference, the Province has a website with a guide to the Act along with links to the Act itself, and the associated regulation and various related forms. The website link is <https://www.gov.mb.ca/condo/>. If you are a current director of your condo corporation, it would be useful to have the link as one of your favorites. Questions from other directors or unit owners often come up in relation to governance, by-laws, AGMs, etc. and you will likely find that on occasion you will have to refer to the Condo Act to answer these types of questions.

RECENT SUGGESTIONS FOR IMPROVEMENT & QUESTIONS

1. **Status Certificates** - Why isn't the Status Certificate a required document rather than an optional document since it is potentially very important for the buyer or mortgagee of a unit?
 - a. Section 61 of the Condo Act <https://web2.gov.mb.ca/laws/statutes/2011/c03011e.php> - A61 states that “Upon request of a buyer of a unit...” and that “**The status certificate is binding on the condominium corporation in favour of a buyer or unit mortgagee, who may rely on the certificate as conclusive proof of its contents as of the date of the certificate.**” This seems to suggest it is an important document those involved in the purchase of the unit – to mitigate the “buyer beware” risk.
 - b. Both Form 1 of Section 6 and Form 3 of Section 7 of the Condo Regulation <https://web2.gov.mb.ca/laws/regs/current/164.14.pdf> have in statements in bold “**Note: It is recommended that before the closing date of the agreement of purchase and sale, the buyer of a unit obtain a status certificate from the condominium corporation. A status certificate will show if the unit owner owes any money to the condominium corporation or is in breach of the declaration, by-laws or rules.**” This also seems to suggest it is an important document.
2. **Common Expense Fund (CEF) and Reserve Fund (RF)** - Currently the Act does not consider Reserve Fund Contributions (RFC) as a common expense, even though the RF will be used eventually to pay expenses for repairs or renovations to the common elements. This interpretation makes it difficult for Condo Corporation (CC) Boards to ensure adequate funding in the Reserve Fund and for equitable RFCs amongst the unit owners. As well, there is potential for inequitable Special Assessments amongst the unit owners in the future if the Reserve Fund balance is insufficient to cover needed works. For example:

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- a. If at the end of a fiscal year the Board has a surplus in its operating account, perhaps because of lower than anticipated expenses (such as fewer snow clearing bills), the Board may desire to do a lump sum RFC. However, Section 140 of the Condo Act states *"Money in the common expenses fund may be used only to pay common expenses."*
- b. While Section 139(2) defines the requirements for CEF contributions and Section 139(3) allows for different contribution levels towards the CEF depending on the type of unit *"If provided for in the condominium corporation's declaration, the types of common expenses in respect of which unit owners are obligated to contribute may be different for different units or types of units."* there is no such provision for Special Assessments, since Section 142(3) states *"The amount of a special assessment must be apportioned among the unit owners in the same proportions as the annual assessment under subsection 139(2)."* This means that while the Board has some flexibility to ensure CEF contributions are equitable amongst the different unit types, if there are inadequate funds in the RF when work needs to be done, the Special Assessment will be inequitable.
- c. Similarly, there is no provision for equitable RFCs amongst the unit owners depending on unit type, since Section 144(1) states *"For each fiscal year, a condominium corporation must ... determine the amount of each unit owner's contribution by apportioning the amount among the unit owners ... (ii) if no proportions are specified, in the proportions specified in the declaration for contributions to the common expenses."*
- d. Additionally, while Section 139(3) allows for different contribution levels towards the CEF depending on the type of unit, no allowance is made for differences amongst unit owners for differences in access to common elements, such as through an Exclusive Use Agreement (EUA) that is transferable and not tied to the unit and its title. To ensure more equitable RFCs and CEF contributions, EUAs should be considered in a similar manner to different types of units.

3. **Short Term Rentals** - There was a suggestion to include something about not allowing short term rentals in condo. This topic is still contentious but has been covered in a CCI Manitoba podcast¹ and in an article² in the Fall 2020 edition of this newsletter. Short-term rentals of condo units and AirBnB have not yet been tested in the Manitoba courts but based on other provinces, they can be restricted or prohibited from operating, assuming the Declaration and Bylaws are written appropriately.

4. **Your Condo Act improvement idea to be displayed here!** 📌

¹ Virtual AGM's / Air BnB and Condominiums: The Rise of "Ghost Hotels", Sept 17, 2020 by Matthew Jerome <https://cci-manitoba.ca/members-only/podcasts-webinars>

² An Update On Condominiums and AirBnB by Matthew Jerome, CCI MB Condominium News & Views, Fall 2020 Edition <https://cci-manitoba.ca/sites/default/uploads/files/CCI-MB-Newsletter-2020-Fall.pdf>

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