REAL ESTATE COUNCIL OF ALBERTA®

RESPONSE FROM THE REAL ESTATE COUNCIL OF ALBERTA TO QUESTIONS POSED BY SERVICE ALBERTA IN IT'S *CONDOMINIUM PROPERTY ACT* CONSULTATION PAPER

In this paper, the Real Estate Council of Alberta (RECA) followed Service Alberta's Consultation Paper format. The Service Alberta's Consultation Paper format includes a numbered backgrounder, followed by questions. RECA has responded to each question (in blue), with comments, and has made additional comments at the end of this paper.

Date of RECA response: April 11, 2013

1. Buying a New Condominium

A developer is defined in the *Condominium Property Act* (the Act) as a person who sells condominium units to the public the first time that the unit is sold on the market. The term applies to builders, as well as, to people who convert existing buildings into condominiums.

Among other things, the Act states that developers must:

- deal fairly with buyers when selling a unit;
- disclose information by giving various documents to buyers, to make sure they have the information they need when deciding whether to buy;
- ensure that the purchaser's funds are protected;
- hold the first general meeting of the unit owners within a certain time; and
- provide condominium boards with various documents about the condominium project.

As a general rule, developers have been following these rules. Some developers, however, are either unaware of the rules or unwilling to follow them. The Committee considered each of the rules and how they could be made clearer.

A. Fair dealing

At present the Act states that developers and buyers must deal fairly with each other when buying and selling a condominium unit. Although "fair dealing" is difficult to define, the intention is to help prevent developers and buyers from taking advantage of each other.

1. Should the Act define "fair dealing" and expand the concept to indicate that all parties involved in the condominium, including the developer, unit owners and

board members, must deal fairly with one another?

☐ Yes ☐ No ☒ Other

Comments/Reasons for your answer:

To resonate clearly with consumers and condominium boards, managers and related professionals, RECA believes the requirements and responsibilities for persons involved in condominium transactions, including developers, governance by boards, condominium management and unit owners should be clearly listed in the legislation. This approach may be more effective than defining "fair dealing".

In the *Real Estate Ac*t Rules, the general responsibilities for all industry professionals and the specific responsibilities for industry professionals from the real estate, mortgage and real estate appraisal sectors to consumers, brokerages, the regulator (Real Estate Council of Alberta) and others are clearly set out. Using this legislation as a reference, a similar and straightforward structure may be developed for condominium legislation in Alberta. Responsibilities in the *Real Estate Act* Rules include acting honestly, making particular types of disclosure, including conflicts of interest, what persons roles are and ensuring these roles are clearly understood. These responsibilities all derive from ethical conduct or what one might understand is fair dealing but the responsibilities are more specifically and clearly laid out and therefore better assist professionals and consumers to understand compliance requirements.

To ensure compliance, there should be sanctions for breach and an independent authority having regulatory oversight, particularly for condominium managers.

2. What other changes would you recommend on the concept of "fair dealing"?

Comments/Reasons for your answer:

See above – the concept should be abandoned in favor of specific requirements as recommended above.

B. Disclosure to buyers

I. Operating budget

At present, buyers must be given an estimate of the condo fees "on a reasonable economic basis". The Committee recommends that the developer must also provide a copy of the proposed operating budget outlining the corporation's anticipated expenses for the given year, including the date on which the budget was prepared. This will help buyers understand how their monthly condo fees are decided by explaining how the money will be used during the year.

1. Should the Act require developers to prepare a proposed operating budget and provide it to buyers?

☒ Yes ☐ No

Comments/Reasons for your answer:

An estimate of condo fees on “a reasonable economic basis”, without a legislative guide as to what that means, may result in inadequate guidance to a developer as to legislative requirements and uncertain and perhaps erroneous information being supplied to buyers upon which they cannot reasonably rely. A requirement in the legislation that the corporation’s proposed operating budget be prepared, updated on a monthly basis, and provided to buyers (including the last date drafted), would provide buyers with some information for their assessment of the likely accuracy of the developer’s estimate of condo fees. Also, the developer should be required to conduct an initial reserve fund study since outcomes may impact the developer’s proposed operating budget and conduct an update on the reserve fund study at substantial completion if actual construction varied from the original drawings and specifications.

Sometimes, the initial condo fees set by the developer are not enough to pay for the corporation’s expenses for a given year. In response, the board of directors must increase the condo fees considerably in the following year to generate enough revenue to cover the corporation’s expenses.

2. Do you think the Act should include consequences for developers who misrepresent the initial condominium fees to buyers?

☒ Yes ☐ No

Comments/Reasons for your answer:

This is a consumer protection concern. Consequences to developers for misrepresentations about condo fees will likely result in more accurate condo fee estimates for consumers. With an adequate deterrent, information will likely be based on better underlying information, including reserve fund studies and reliable operating budgets. If the developer has been fraudulent or negligent in the representations made, developers should be held accountable. There is a temptation to represent low fees and to defer costs so that the unit prices and associated costs appear as low as possible at the point of sale. If there is honest uncertainty about the ultimate condo fees, there should be an adequate developer disclosure, with the content of that disclosure a regulated matter, upon which the consumer can reasonably rely.

II. Building Assessment Report for converted condominiums

Some condominiums are protected by home warranties. Alberta home warranties usually protect deposits, first year workmanship and materials and structural components of the building. Warranty protection is not available for conversions - buildings (e.g. rental projects) that have been converted to condominiums.

The Act already states that developers must hire a knowledgeable person to do a reserve fund study before selling units, and give buyers a copy of the proposed reserve fund plan based on the study. The reserve fund study lists common property that will require repair or replacement over the next 25 years. It also estimates the amount of money that should be set aside each year to cover future repairs and replacement of the depreciating property. The reserve fund plan shows how and when the amount needed will be collected from the unit owners.

Some committee members felt that when a building is converted to a condominium, the developer should have to give buyers a Building Assessment Report (BAR) from a qualified, third-party engineer as one of the required documents. When writing a BAR, the engineer would inspect the common property of the converted building, prepare a list of any problem areas that he or she can detect, and make recommendations for fixing those problems. Electrical and mechanical systems, building envelope, roofing, windows, doors and parking garages would all be inspected. BARs can be expensive to produce and the developer may pass the costs to buyers.

1. Should a Building Assessment Report ('BAR') be prepared by a qualified professional and provided to buyers of a converted condominium?

☒ Yes ☐ No

Comments/Reasons for your answer:

The BAR is an important document for consumers purchasing converted condominiums. There should be a legislative requirement as to who can prepare the BAR and what their qualifications must be, what information the BAR should contain and that it be required to be disclosed to consumers in a timely manner in advance of purchase. This is a very important document for buyers because of the possibility of material latent defects which are legally required to be disclosed by sellers to buyers.

C. Buyer's right to cancel

Presently, a buyer can cancel the purchase agreement up to 10 days after it is signed, **unless** the developer has provided all of the required documents, at least 10 days before the date that the agreement is signed. For example, Mary signs a purchase agreement on May 15. Unless the developer has given her the required documents by May 5, she has until May 25 to cancel the agreement if she changes her mind.

However, in some cases, a buyer may enter into a purchase agreement without receiving a complete set of disclosure documents from the developer.

Committee Recommendation:

To ensure buyers have the benefit of receiving all of the mandatory disclosure material before making a commitment to purchase, the Committee proposes that the 10-day cancellation period should begin from the date the developer gives the buyer all of the documents, regardless of when the agreement is signed. In this case, if the purchase agreement is signed 7 days after the required documents are provided, the buyer would have 3 days to cancel the agreement, but if the purchase agreement is signed 7 days before the buyer receives the documents, the buyer would have 10 days from the date that the documents are received to cancel the purchase agreement.

1. If a buyer receives an incomplete set of documents from the developer, should the buyer have until the tenth day after the remaining documents are provided to cancel?

☒ Yes ☐ No

Comments/Reasons for your answer:

Consumers need to understand what a full and complete set of condominium documents includes. A list of documents required to be supplied by developers should be set out in the regulations, including bylaws, condominium plan, operating budget, financial statements, agreement for purchase and sale, etc. Buyers can only make fully informed decisions when they have all of the information upon which to make decisions. Condo documents are complicated and complex. Often buyers require assistance to understand content. Obtaining this assistance takes time; 10 business days should be adequate. Once the required documents have been supplied to the buyer, to protect the developer and the buyer, the buyer should be required to acknowledge receipt. If the sale progresses, the buyer should be given sufficient time to seek independent advice on any matters arising from review of the documents and be required to indicate they read and understood the documents.

2. Are there any other changes that you feel would better address a buyer's right to cancel a purchase agreement? If so, please provide reasons/comments for your answer:

As indicated, the requirements around condominium document provision by developers should be regulated. As well, buyers should be informed that they are buying into a corporation at the same time as buying a home. Buyers need to have a better understanding of what the realities are when one lives in a condo – how condos operate, what the responsibilities of the parties are, including the condo board, managers and owners, how to read financial statements and operating budgets, what a reserve fund is and how it functions, what the bylaws are, what the rules and requirements are, what common property is, who owns it, who and how it is managed, what the management costs are, insurance considerations, special assessments and how these operate, exceptional expenses, etc. Information pieces should be developed by an authority and be required to be supplied by developers to buyers.

D. Deposits and construction completion

Some developers buy deposit insurance and/or "cost-to-complete guarantees" to protect buyers' deposit money. Developers that do not must keep a buyer's deposit money in a trust account until the unit ownership is legally transferred to the buyer. Those developers must also hold back enough of the buyer's deposit money to ensure they cover the cost of "substantially completing" the unit and the common property. If there are delays in construction, a buyer's deposit may be tied up for a long time.

Committee Recommendation:

Some committee members proposed that developers should be given a set maximum amount of time to complete a condominium project. However, others believed that reasonable completion times would depend on the project (i.e., a small townhouse project would take much less time to complete than a large high-rise building) and, therefore, no maximum time limit should be set. Permit approvals, weather, availability of trades, etc., could also have an effect on a developer's ability to complete a project in time.

1. Do you think that the current version of the *Act* adequately protects buyers' deposits?

☐ Yes ☐ No ☒ Other

2. Do you feel developers should be given a set maximum amount of time to complete a project?

☐ Yes ☐ No ☒ Other

3. Are there any other changes you feel should be considered? If so, please provide comments/reasons for your answer:

☐ Yes ☐ No ☒ Other

Comments/Reasons for your answer:

The issue is consumer protection. All buyers' deposits should be held in trust by developers in accordance with the terms of trust in the purchase and sale agreement. Terms in the purchase and sale agreement should conform to the legislation. Legislation should provide the maximum length of time these monies may be held in trust in the absence of an informed extension agreement between the parties. Developers should not be permitted to hold deposits indefinitely or to an unspecified and unclear date or event. Buyers should be credited all interest on their deposit money held in trust by developers. After the maximum length of time for holding trust monies has elapsed, buyers should be able to rescind the agreement at their option.

2. Starting a New Condominium Corporation

A. First (inaugural) meeting of owners

Currently, the Act states that developers must call the first (inaugural) general meeting of the owners within certain periods of time. For many projects, these timeframes are not practical because:

- sometimes the meeting must be held when only a small percentage of units is occupied;
- owners can be out-voted by developers, who want to retain control of their project until a substantial number of units is sold and occupied; and
- owner boards that are established too early can find it hard to figure out what common expenses are to be shared by the owners and what costs the developer is responsible for.

Committee Recommendation:

The developer must hold an inaugural meeting of the unit owners up to 30 days after the plan is registered, in order to elect an interim board. The interim board must then call the first annual general meeting of unit owners within 15 months of that first meeting.

1. Would this change make it easier to understand when the first board is to be elected and when the first annual general meeting is to be held?

☐ Yes ☒ No

Comments/Reasons for your answer:

A recommendation is that the developer should hold the first inaugural meeting within 12 months after the plan is registered or when there is 40% arm's length unit occupancy, whichever first occurs, for purposes of electing the first board.

B. Condominium fees (contributions)

The developer usually pays all the condominium project expenses until condominium fees are assessed. The condominium fees are then collected from owners and put toward the corporation's common expenses, such as insurance premiums, snow removal, maintenance and repairs to common property and supplementing the reserve fund. Some committee members raised concerns that, in some cases, developers are not paying condominium fees for completed but unsold units that they own in new condominium projects.

Committee Recommendation:

The developer must pay all the project management expenses until condominium fees are assessed. When condo fees are assessed, all owners in substantially completed phases must pay their share of common expenses, including the developer, if there are units that are finished but not sold.

1. Should all unit owners, including developers, be required to pay condominium fees at the same time in substantially completed condominium phases?

☒ Yes ☐ No

Comments/Reasons for your answer:

This seems fair since the condo fees are paid by unit holders and the developer would still be holding units. They should pay their proportionate share. Note: the passing of cost deficiencies to the condo board which in turn passes these to the unit owners in higher condo fees should be prohibited.

C. Project documents

At present, developers must give various documents (warranties, construction drawings, utility layouts, contracts, permits, etc.) to the condominium corporation within 180 days after the condominium plan is registered. This ensures that condominium corporations have a written record of the documents for their condominium complex. It also helps corporations determine the location of structural, mechanical and architectural components of the condominium complex when the need for major repairs to common property arises. In practice, this requirement is sometimes difficult for developers to follow because, currently, very few developers employ someone to produce "as-built" construction drawings. Mandatory drawings could increase project costs (and unit prices) by about three to four per cent.

1. Should the list of documents that developers must give to a condominium corporation be changed?

☒ Yes ☐ No

2. What documents do you believe should and shouldn't be provided to the corporation?

Because obtaining condominium documents creates many issues in Alberta, it's recommended that there be a central repository for all documents that relate to condominiums where developers, condominium boards and managers could be required to register the documents set out in legislation or regulations. This would assist all persons involved, particularly when people are trying to buy and sell condos. Timelines for filing documents should also be set out in the legislation. In addition to the documents noted, types of documents that should be included are:

- Water/sewer lines (city does not provide for private properties)
- Landscaping, including power and sprinkler lines
- Shut off systems
- Electrical and meters
- Anything related to possible future repairs
- Technical drawings as built, noting changes from original drawings
- Outdoor lighting

3. **Would you be willing to pay more for your condominium unit if documents such as structural, architectural, mechanical and as-built drawings were required to be provided to the corporation by the developer?**

☒ Yes ☐ No

Comments/Reasons for your answer:

The view is that in one way or another, buyers are going to pay for the documents listed above in any event. If they were required to be provided by the developer to the corporation, there could be an assurance that the documents are in place and available. It's easier to do this in the beginning of the project. The view is that it's a small sum for long term investment in the condominium project. There should be a central repository for documents. This could perhaps be tied to SPIN.

D. Parking stalls

The number of parking stalls that must be kept for visitors and for persons with disabilities is set out in the Alberta Building Code and in municipal bylaws. These stalls are intended to be under the control of the condominium corporation, for use by residents and visitors. In some condominiums these stalls have been titled as units and sold to individual buyers by the developer and, over time, are no longer available for the residents and visitors who need them.

Committee Recommendation:

All visitor and disabled parking stalls must be listed as common property (i.e., managed by the corporation) in the condominium plan.

1. **Should visitor and disabled parking stalls be designated as common property in the condominium plan**?

☒ Yes ☐ No

Comments/Reasons for your answer:

Most assume visitor and disabled parking stalls are there and available for use for all, particularly after a visual inspection of the property. If there will be a change, owners should be notified and given an opportunity to vote on the issue and give input.

3. Running the Condominium Corporation

The condominium corporation consists of the owners of all the units in the condominium plan. Owners must elect a Board of Directors at an annual general meeting or at other meetings of the owners, to run the condominium corporation according to the Act and bylaws.

Under the Act, the Board must act honestly and in good faith when carrying out its duties, which include:

- controlling, managing and maintaining the common property and assets of the corporation;
- ensuring owners follow the Act and bylaws;
- calling and holding annual general meetings and other meetings of the owners;
- establishing and maintaining a capital replacement reserve fund;
- getting insurance on the common property and assets of the corporation;
- ensuring owners pay contributions (condo fees, special assessments); and
- providing owners, buyers and mortgagees with copies of certain documents on request (annual budget, financial statements, bylaws, minutes from meetings, insurance policy, reserve fund statement etc.).

Owners also have important responsibilities within the condominium corporation. They are expected to pay their contributions on time, attend general meetings, vote on ordinary and special resolutions, and stand for election on the board in order to help run the corporation. Owners should also be familiar with the Act, the bylaws and the way the corporation is run.

Bylaws are unique to each condominium corporation. Any changes to them must be made through a special resolution, and must have the approval of at least 75 per cent of the owners representing not less than 7500 unit factors. Unit factors are assigned by the developer to each unit in a condominium and represent an owner's proportional share of the common property. The total number of unit factors assigned to each condominium corporation is 10,000.

A. Recalling a member of the Board of Directors

Sometimes owners become dissatisfied with the decisions or performance of one or more board members, and wish to remove the individual(s) before the end of their terms. This is sometimes called a "recall". The Act does not deal with recall. Some bylaws do provide a recall process, but some do not.

Committee Recommendation:

The Act should give owners the right to recall any board member. This could be done by a majority vote of the owners at a general meeting of the corporation called for this specific purpose.

1. Should the Act give owners the right to recall a board member?

☒ Yes ☐ No

Comments/Reasons for your answer:

It's in the best interests of the condominium and owners to have the right to recall (remove) a board member. It's a matter or good governance. The unit owners elect the board members and should be able to remove them. However, the circumstances in which board members may be recalled, should be set out in the legislation or regulations. As a model, consideration could be given to the Alberta *Business Corporations Act*.

Preference is for use of the word “remove” (per Alberta *Business Corporations Act*) as opposed to “recall”.

2. If you agree that the Act should give owners the right to recall board members, should it also say how this must done?

☒ Yes ☐ No

Comments/Reasons for your answer:

the processes and procedures should be set out. The Alberta *Business Corporations Act* provides a model.

3. If you agree that the Act should set out how to recall board members, what do you believe those recall procedures should be?

Comments/Reasons for your answer:

The board member who is subject to recall and the unit owners should be given written notice that the issue will be addressed at an extraordinary meeting. There should be an open forum where everyone gets an opportunity to express their views. The reasons for the recall should be clearly set out with documentary information supplied to the board member who is the subject of the recall and unit owners. The board member who is the subject of the recall should be provided an opportunity to speak to the issues and present documentary information. The same number/percentage of votes that were required to elect the member should be the same number/percentage of votes to recall the member. It’s recognized that it may be difficult to obtain 75% of unit owners because owners are not always at meetings. Therefore, voting methods should be considered, including opportunities to vote electronically or by telephone. The Alberta *Business Corporations Act* provides a model.

B. General meetings of the owners

The Act requires condominium corporations to hold annual general meetings, but it does not require them to call “extraordinary general meetings” or “special meetings” of the owners to conduct corporation business, even if the owners want those extra meetings to deal with important issues. Many bylaws in Alberta require boards to call extraordinary meetings if a certain number of owners ask for them, but not all bylaws have this requirement.

1. Should the Act require all boards to call extraordinary meetings if a certain number of owners ask for them?

☒ Yes ☐ No

Comments/Reasons for your answer:

The unit owners are the people who own the condominium. Although perhaps not board members, all unit owners should be given a voice if issues of importance arise. It's a democratic system. It's not clear what the number of unit owners ought to be to bring on an extraordinary meeting but it should be substantial i.e. one third.

2. Are there any circumstances where owners should not be allowed to call extraordinary meetings?

Comments/Reasons for your answer:

In our view, it can never be in the owner's best interests not to have this right. It should be in the legislation.

C. Format of Meetings

The best way for condominium corporations to carry out their business is for the Board of Directors to discuss issues and pass motions for action at meetings. Currently, condominium corporations must hold board meetings in person in the same municipality as the condominium property, unless the majority of owners pre-approve other ways for the board to conduct meetings. For instance, many businesses allow their boards to conduct meetings using modern technologies, such as teleconferencing or videoconferencing.

Committee Recommendation:

The Act should permit condominium boards to meet in other ways, such as by telephone conferencing and video conferencing.

1. Do you think the Act should allow board members to attend board meetings by video or teleconference?

☒ Yes ☐ No

Comments/Reasons for your answer:

This would permit greater potential participation of the unit owners and it's the modern way of the world. There should be guidelines for these meetings since confidentiality may be a concern i.e. the person is not sitting in a food court where there may be public monitoring of a private meeting.

2. What would your concerns be if the board did not meet in person?

Comments/Reasons for your answer:

One concern is confidentiality.

D. Notice of meetings

Currently, the Act does not state how much notice must be given to owners about an upcoming annual general meeting or other general meeting. If owners do not get enough notice they may not have time to arrange to attend a meeting or appoint a proxy (a proxy allows a person who cannot attend a meeting to vote, either by a signed statement or by appointing someone else to attend and vote for him/her). However, if meetings have to be arranged too far in advance it can be harder for corporations to act quickly.

Committee Recommendation:

The Act should give owners the right to a minimum 14-day written notice, delivered in person or by mail, regarding a meeting of the corporation. Corporations could set a longer notice period in their bylaws.

1. Should the Act set minimum notice periods for all general meetings, or should periods be dealt with in the bylaws of each corporation?

☒ Put rules in the Act ☐ Leave it to the bylaws

Comments/Reasons for your answer:

The concern is that all unit owners need to be aware of condo meetings and issues and notice. Therefore, in our view, this should be in the Act. The minimum notice period should be 14 business days. Reference could be had to the Alberta *Business Corporations Act.*

2. If you think that the minimum notice period should be set out in the Act, what do you think that period should be?

Comments/Reasons for your answer:

We recommend 14 business days. However, if there are extraordinary reasons, which should be set out in the legislation, the minimum may be abbreviated.

Proxies should only be permitted to be unit owners and not a management company because of the conflict of interest (i.e. the management company may just collect all proxies without adequate information to owners).

E. Voting at general meetings of the condominium corporation

The Act states that the voting rights of an owner are based on the unit factors of the owner's unit (unit factors are assigned by the developer to each unit in a condominium and represent an owner's proportional share of the common property). This means that at all general meetings, whenever there is a vote for or against a motion, each owner's unit factors should be counted. However, counting votes by unit factors is time consuming, so many condo bylaws also permit votes at general meetings to be

conducted by “show of hands” (one vote for every owner or unit). The problem is that the Act does not recognize “show of hands” voting as a valid method of voting.

Committee Recommendation:

The Act should allow a “show of hands” vote at general meetings, as long as no one has demanded that the vote be conducted by unit factor count.

1. Should the Act allow “show of hands” voting or should the Act continue to require votes to be conducted by unit factor count?

☐ Allow show of hands voting ☐ Require voting by unit factors ☒ Other

Comments/Reasons for your answer:

Generally, allow a show of hands but at the discretion of the board, they could require voting by unit factors.

2. If voting by “show of hands” is allowed in the Act, should the vote be counted by units (i.e., one vote per unit) or by owners (i.e., one vote per registered owner)?

☒ One vote per unit ☐ One vote per registered owner

Comments/Reasons for your answer:

One vote per unit because the ”unit” speaks for the registered owner(s) - even if there’s more than one owner of the unit. The vote should be on the basis of the one unit one vote.

F. Denying an owner the right to vote

The Act states that an owner or mortgagee cannot vote at general meetings if they have outstanding contributions (i.e., condo fees, special assessments) or obligations owing to the corporation. The term “obligation” is not defined in the Act and there are concerns that some boards have applied “obligation” in ways it was never intended. Misuse of “obligation” would be, for example, denying an owner or mortgagee the right to vote because of an unpaid monetary sanction or a chargeback that the owner is disputing.

Committee Recommendation:

The Act should clarify that an owner or mortgagee can only be denied the right to vote if there are unpaid contributions or unpaid court orders or judgments obtained by the corporation.

1. Do you agree that an owner’s or mortgagee’s right to vote should be denied if there are unpaid contributions or unpaid court orders or judgments obtained by the corporation?

☒ Yes ☐ No

Comments/Reasons for your answer:

There should be a loss to influence the activities of the condominium in these circumstances. Without payment, there is harm to the condo community and the board needs money in order to operate.

2. Are there any other circumstances in which owners or mortgagees should be prevented from voting?

Comments/Reasons for your answer:

No.

G. Special resolutions

A special resolution is required for important business decisions that will affect owners significantly. These include changing the bylaws, selling or leasing common property, buying land, using reserve fund money for capital improvements, or terminating the condominium plan. A special resolution requires the approval of at least 75 per cent of the owners, representing not less than 7500 unit factors. It is often difficult for boards to get enough owners to approve special resolutions because some owners do not take an interest in the business of the corporation: they do not attend meetings or respond to written votes.

The Committee considered several options to deal with this issue:

- leave things as they are;
- lower the minimum percentage of votes required to pass a special resolution;
- set different requirements depending on the issue (i.e., 75 per cent for sale or lease of corporation property but 65 per cent for passing new bylaws); or
- allow 75 per cent of those present at the meeting (including proxies) to pass the resolution.

1. Should there be a change to the minimum number of votes needed to pass a special resolution

☐ Yes ☐ No ☒ Other

Comments/Reasons for your answer:

This should be aligned with the Alberta *Business Corporation Act* ie. …a resolution passed by a majority of not less than 2/3 of the votes cast by the shareholders who voted in respect of that resolution or signed by all the shareholders entitled to vote on that resolution.

2. **If so, what should this minimum number be? Should the number of votes required to pass a special resolution be the same for all decisions or should there be different numbers required for different decisions?**

Comments/Reasons for your answer:

As above

H. Charges for documents

The Act requires condominium corporations to provide copies of certain documents to owners, buyers and mortgagees on written request. These include the corporation's bylaws, minutes of board and general meetings, the most recent financial statements and budget, estoppel certificates, the corporation's insurance policy, and reserve fund report and plan. These documents help condominium owners and buyers better understand what condition the condominium property is in and how the corporation and community are run.

The Act also allows corporations to charge a reasonable fee to compensate it for the cost of producing and providing these documents, but does not give any guidelines on how the fee is to be set. Often the fee is set in the contract between the corporation and the management company. Corporations and condominium managers say they need to be reimbursed for the costs of providing these documents; however, there have been concerns by owners that some corporations and/or condominium managers are charging excessive amounts for documents.

The Committee considered the following options to deal with this issue:

- leave things as they are, and let each board set the fee for the documents that it is required to provide;
- set a maximum fee that can be charged by corporations for producing and providing the documents; or
- not set fees, instead require corporations and/or condominium managers to provide the documents to owners, buyers and mortgagees free of charge, when requested. The cost would be absorbed by the corporation and paid for through condominium contributions.

1. **Should the Act address fees charged for documents or should the fee for documents continue to be left to the corporation to determine?**

☒ Address fees for documents in the Act ☐ Allow corporations to determine fees

Comments/Reasons for your answer:

The condo board should provide the documents free of change. If there was a central repository, the documents could be made available with ease. These can be made available electronically. Until there is a central repository, there could be a nominal fee of

$50 for the documents. The concept should be that if a person is a unit owner, documents relating to the specific and common property should be free.

2. Who should bear the cost of providing the documents?

☒ Condominium corporation ☐ Person asking for them

Comments/Reasons for your answer:

The condominium corporation has to maintain and keep the documents current. Every owner should get many of the documents monthly, including meeting minutes, financial statements, operating budget, etc. These should be made available electronically. A password protected site for documents could be considered as well.

I. Corporation's Borrowing Powers

Condominium corporations must set up a Capital Replacement Reserve Fund to pay for major repairs and replacement of the common property and corporation assets. For various reasons, corporations may not always have enough money on hand in their reserve account for significant or unexpected repairs. When this happens, the board may levy a special assessment to raise money for the repairs. Sometimes, it is difficult for the board to collect special assessments from owners, especially if the assessments are high.

Currently, the Act does not address a corporation's ability to borrow money for payment of common expenses, so some corporations have added this authority to their bylaws. Bylaws may, for example, allow a corporation to borrow up to a certain amount. Some require the board to get the approval of the majority of owners before doing so. In situations where a condominium corporation does not have reasonable assets to secure a loan, the lender will usually take a portion of the corporation's future condo fee revenue for a pre-determined period, until the debt is repaid. Repayment can take months or even years, depending on the amount of the loan.

1. Should the Act enable corporations to borrow money?

☒ Yes ☐ No

Comments/Reasons for your answer:

This could be permitted on the basis of a special resolution per the Alberta *Business Corporations Act* model (generally 66.6%). This legislation could be used as a model.

2. What restrictions, if any, should there be on a corporation's ability to borrow money?

Comments/Reasons for your answer:

There should be no limits or restrictions because lenders will put on the normal lending restrictions.

4. Maintenance of Units in a Bare Land Condominium

The Alberta Court of Queen's Bench recently issued a decision that calls into question a bare land condominium corporation's capacity to repair and maintain the exterior of individual units or "Managed Property", and pre-collect funds from unit owners for this purpose.

There are two main types of condominium developments: conventional and bare land. In a conventional condominium, the unit boundaries are three-dimensional and defined by reference to the floors, walls and ceilings of a building (e.g. apartment-style, town-house style). Everything contained outside of the individual units in a conventional development is common property. In a bare land condominium, the unit boundaries are two-dimensional and defined by survey monuments placed on the land itself. A bare land unit typically includes the entire building and any surrounding landscaping located on the parcel of land. Some bare land developments contain common property such as roads, walkways and recreational facilities while other bare lands contain no common property at all. Bare land condominiums can take the form of single detached homes, or duplex or town-house style buildings where party walls between the units will exist.

In *Maciejko v. Condominium Plan No. 9821495*, the developer of the bare land condominium project had registered at the Land Titles Office a restrictive covenant stating that the condominium corporation had the exclusive right and obligation to maintain all areas of the project other, than the interior of the individual buildings. In other words, the corporation was responsible for repairing and maintaining the exterior elements of the buildings. This was also reflected in the corporation's bylaws, with some tweaking to allow for effective operation of the scheme. The Court determined that the condominium corporation has the legal mandate to maintain the Managed Property, in accordance with the restrictive covenant and the bylaws; however, it does not have authority under the Act to pre-collect funds from owners in any type of parallel reserve fund, for this purpose. The decision was based to a great extent on the finding that the capital replacement reserve fund established under section 38 of the Act is intended solely for major repairs and replacement of the common property and the real and personal property of the corporation.

The outcome of this case has created some operational challenges for bare land condominium corporations that have been assigned, through properly passed bylaws or some type of managed property agreement, the responsibility of repairing and up-keeping portions of individual units. Without the ability to pre-collect funds from unit owners or draw money from the reserve fund, these corporations are now uncertain as to how to continue paying expenses associated with the Managed Property.

Some stakeholders support corporations having the ability to oversee the maintenance of managed property. They believe this will allow corporations to plan for long term expenses associated with the exterior of individual units and ensure all units are maintained to a reasonable standard, as they continue to age. Another perceived benefit of this scheme is that prospective buyers would be able to obtain information about the condition and repair needs of a unit from the corporation, prior to making a purchase.

Others stakeholders believe that the Act does not give corporations the right to maintain property contained within the boundaries of individual units, regardless of what the bylaws specify and, as such, corporations should **not** be able to collect funds from owners for this purpose. They believe owners of bare land units should have the right to care for their property on their own terms, similar to owners of single-family homes.

As a result of the court decision and mixed views on this matter, stakeholders within the condominium community have asked the Government of Alberta to consider issues surrounding the maintenance of bare land units and clarify a condominium corporation's powers in this regard.

1. Should the Act specify a condominium corporation's right to repair and maintain the exterior components of a building and any surrounding grounds contained within a bare land unit, provided that the corporation's authority and responsibilities are set out in the bylaws?

☒ Yes ☐ No

Comments/Reasons for your answer:

It is important to unit owners that there be a good standard of maintenance and appearance and that there be consistency and uniformity in the building and surrounding grounds. When documents are disclosed to buyers, they should be aware of this responsibility.

2. If you responded yes to the above question, should the Act enable a condominium corporation to pre-collect money from unit owners and deposit those monies into the Capital Replacement Reserve Fund or some other fund for the purposes of repairing and replacing Managed Property?

☒ Yes ☐ No

Comments/Reasons for your answer:

Maintenance is a requirement and therefore there is a need to have adequate funds at the time the project begins operations (pre-collection should be permitted). These funds should be deposited into the capital replacement reserve fund.

5. Insurance

Condominiums usually include property jointly owned by all owners (the "common property") and property owned individually by the owners (the "units"). Each corporation's condominium plan sets out the common property and unit boundaries for that condominium.

Under the Act, condominium corporations must insure the common property (replacement cost value property insurance). The corporation must also insure units that are located within a building. The corporation does not have to insure improvements to conventional units, unless the bylaws say they must. If the units are bare land units, the corporation does not have to insure the units, unless the

bylaws expressly say so. The Act does not require individual owners to insure either their units or their unit contents, but many owners choose to purchase insurance to protect their property from loss or damage.

The corporation buys the property insurance policy for the benefit of the individual unit owners. The cost of the policy is treated as a common expense and is paid for through the condominium contributions (condo fees) collected from the owners.

The committee identified three issues concerning condominium property insurance:

A. insurance coverage for improvements to condominium units;
B. responsibility for payment of insurance deductibles; and
C. responsibility for repairs after an insurance claim.

A. Insurance coverage for improvements to condominium units

In Alberta there are no set rules regarding insurance for fixed unit improvements. Some bylaws require unit improvements to be insured, others do not. Some insurers usually include insurance for improvements under their standard policies, others do not. In Alberta there are also no set rules for what is considered to be an improvement, and what is not. Some corporations consider improvements to be only those upgrades that the unit owners have added to their units after the units were purchased from the developer, such as new hardwood flooring to replace carpet or new granite countertops to replace plastic laminate. Some insurers consider an improvement to be anything that is inside the unit boundaries as stated on the condominium plan, including all interior walls, flooring, cabinets, and lighting fixtures, etc. In the case of bare land units, many insurers may even consider the buildings located on the units to be unit improvements.

As a result, corporations and owners may find out after a loss that some parts of the property were double insured by both the corporation and by the unit owner under his or her condominium owner's insurance policy, or the improvements may not have been insured at all.

Bare land units and units used for commercial purposes raise further issues. Some bare land units are sold as only the piece of undeveloped bare land on which the owner constructs his or her own building or other structure. For example, some lake lot condominiums are developed in this manner. Each unit owner may build an entirely different style and size of building on his unit, or might not build at all. As such, the value of the fixed improvements on the units could vary significantly. Units used for commercial purposes can also vary significantly in the type and value of fixed improvements.

The Committee believes that condominium corporations, unit owners and insurers would all benefit from having a clear understanding of what property must be insured by the condominium corporation and what property should be the responsibility of owners to insure. Insurance companies advise that if condominium corporations were required to insure all fixed improvements to conventional residential units:

- insurance premiums would not rise significantly;
- the administration of claims would be simplified; and

- proof that the fixed improvements existed would be needed before they could be claimed.

Committee Recommendation:

- Condominium corporations should be required to obtain and maintain property insurance on the common property, all units and all fixed improvements to units; and

- Condominium corporations should be permitted to opt out of the requirement to insure fixed improvements to units, through their bylaws.

1. In your opinion, should the Act require condominium corporations to insure fixed improvements to units?

☒ Yes ☐ No

Comments/Reasons for your answer:

We agree with the recommendation and its grounds.

2. If the Act requires corporations to insure fixed improvements, should condominium corporations be allowed to opt out of that coverage through their bylaws?

☒ Yes ☐ No

Comments/Reasons for your answer:

There may be cost issues for different corporations. In such a case, unit owners should be given clear notice that fixed improvements should be insured by them.

3. If you responded yes to question 2, under what circumstances should corporations be permitted to opt out of the insurance requirements for fixed improvements (e.g., condominium corporations containing bare land units or units used for commercial purposes)?

Comments/Reasons for your answer:

Insurance for fixed improvements may not make practical sense for bare land units. In all cases, disclosure about what is insured and what is not should be clearly made to buyers.

B. Payment of insurance deductibles

The legislation states that the corporation's insurance coverage must be for replacement value subject to any reasonable deductible as agreed by the insurer and the board. The deductible portion of an insurance claim is the part of the loss that the insured policy holder must pay.

For years, deductibles on condominium corporations' property insurance policies averaged $2,000 to $5,000 per claim, so when there was a claim, corporations could usually stretch their budgets to cover the deductible. However, many condominium corporations have seen dramatic increases in their insurance coverage deductibles, especially regarding water damage claims. Deductibles of $25,000, $50,000 and even $75,000 are not uncommon anymore. If a corporation is able to negotiate a lower deductible, the cost of the policy usually rises significantly.

When a corporation or an owner makes a claim under the corporation's insurance policy, someone must pay the deductible. In most condominiums, damage to one unit can affect the common property and/or surrounding units. For example, if an owner in a high rise condominium turns off his thermostat in winter, the water pipes in his unit may freeze and burst, resulting in water damage to his unit, and possibly the common property and units located directly below. In this case, a claim would be made against the corporation's insurance policy, but who should bear responsibility for paying the deductible? Some bylaws require the unit owner to pay the deductible on this and other types of claims, but others do not.

Often disputes arise between corporations and owners about who should pay the deductible. Condominium corporations usually want the owners who caused the losses to pay the deductibles, as they believe the common funds of the corporation should not be used to pay for a loss caused by one unit owner. In contrast, unit owners who have caused or suffered a loss often insist that the corporation should pay the deductible.

Some owners may face financial hardship if they have to pay the deductible portion of a claim. Unit owners can buy insurance that will pay all or a portion of the deductible under the condominium corporation's insurance policy, if needed.

Committee Recommendation:

- Owners should be responsible for paying the deductible portion of an insurance claim under the corporation's insurance policy, if the damage arises from that owner's property or from any common property that the owner (or his or her tenants, family, friends or visitors) may be using; and
- Owners should be advised and encouraged to obtain condominium unit owners' insurance coverage that will pay all, or a portion, of any deductible that the unit owner may be required to pay.

1. Under what circumstances, if any, should an owner be required to pay the deductible on the corporation's insurance policy?

Comments/Reasons for your answer:

We agree with the above recommendation because the unit owner was responsible for the damage.

2. If an owner is required to pay the deductible, should there be a maximum amount of the deductible he or she should be required to pay (the corporation would cover the balance)?

☒ Yes ☐ No

Comments/Reasons for your answer:

Repairs are for the condo community, whether they be for the specific unit or common property, and there is a level of joint responsibility for the deductible.

3. Should the Act require unit owners to get condominium unit owners' insurance that also covers payment of any deductible the owner may be required to pay on a claim made under the corporation's insurance policy?

☒ Yes ☐ No

Comments/Reasons for your answer:

It is in the best interests of the condo community.

C. Responsibility for repairs after an insurance claim

After an insured loss, both the condominium corporation and the owners want the damages repaired as quickly as possible and things to return to normal. They want to protect the building from further damage, protect their investment and property values, maintain the marketability of the units and reduce conflict between owners in the condominium community.

The Act does not say who must complete the repairs or make sure the repairs are complete after an insurance claim. The insurer is responsible for paying the costs of the repairs (less the deductible) but they are not usually responsible for completing the repairs to either the common property or the units, after an insured loss.

Under the Act, the condominium corporation is responsible for the maintenance and repair of the common property so it makes sense for the corporation to repair the common property after an insurance claim, but what about repairing damage to a unit? The unit is owned by an individual owner, not the condominium corporation. The corporation may have no legal authority to repair a unit or the improvements to a unit after an insurance claim, and the board may not want to become involved with repairing the units to the satisfaction of the individual owners. Additionally, some owners prefer to be in charge of the repairs to their own units after a loss to make sure that the work is done to their satisfaction. On the other hand, if an owner does not promptly repair their unit or fail to repair it properly, the damages may affect surrounding units or the common property.

This situation can result in confusion, delays and conflict amongst the board, the condominium manager and unit owners when repairs are needed.

Committee Recommendation:

- The Act should state that condominium corporations are responsible for completing repairs to the common property after an insured loss;
- The Act should state which party, the condominium corporation or the owner, is to be responsible for completing repairs to a unit after an insured loss, but should permit corporations containing bare land units or commercial usage units to change the responsible party by bylaw; and
- If the Act states that owners are responsible for completing repairs to their own units after an insured loss, then the corporation should have the right to ensure that the repairs are completed properly and on time.

1. When a unit suffers insured damage, who should be responsible for repairing this damage?

☐ Corporation ☐ Owner ☒ Other

Comments/Reasons for your answer:

The unit owner should be responsible for repairing the damage but the corporation should be required to oversee the repairs to ensure they are adequate and in compliance with corporation requirements to the benefit of all owners.

2. If the owners are responsible for repairing the damage to their units, should the corporation have the right to ensure that the repairs are done in a timely and proper manner?

☒Yes ☐No

Comments/Reasons for your answer:

Given that some repairs may impede on the rights or comfort of other unit owners i.e. noise and disruption for the corporation generally and access through common property to access unit, it is important the corporation be involved. Repairs cannot be permitted to remain outstanding or be improperly completed because all unit owners will be affected in one way or another and values may be affected as well.

6. Condominium Management

The Act requires the Boards of Directors of all condominium corporations to manage and administer the common property and enforce the bylaws of the corporation. The work includes:

a) Managing the business and financial affairs of the corporation by

- preparing the proposed annual budgets of the corporation for adoption by the board, and preparing financial statements;
- collecting and depositing the condominium fees, dealing with unpaid fees and registering caveats, if necessary;
- paying the corporation bills and getting property and liability insurance;
- preparing and issuing estoppel certificates; and
- enforcing the bylaws of the corporation.

b) Arranging for the needed repair and maintenance of the common property including buildings and landscaping.

c) Maintaining the records of the corporation, including recording and keeping the minutes of all meetings of the board and the corporation and the correspondence with unit owners.

Some condominium board members do all the necessary management tasks themselves, but many find that they do not have the time, skills or experience necessary to do all of the work needed to manage a condominium properly. These boards will usually hire condominium managers to do some or all of this work and to provide guidance to the board.

The Committee identified four issues concerning condominium managers:

A. Knowledge, competencies and standards of practice of condominium managers;
B. Condominium documents held by the condominium manager;
C. Cancelling the first condominium management contract; and
D. Term of management contracts and automatic contract renewals.

A. Knowledge, competencies and standards of practice of condominium managers

Established training, education, rules and standards of practice required for any given occupation help ensure that people who work in that occupation are qualified to do the job. At present, the Act does not set out any such requirements for condominium managers.

The *Real Estate Act*, administered by the Real Estate Council of Alberta (RECA), provides training for general property managers (those who advertise, negotiate and/or approve a lease or rental of real estate), but not specifically for condominium managers. RECA provides some rules for condominium managers who collect and handle condominium fees and pay bills from the condominium corporation's funds, but these rules mainly deal with the trust accounts that condominium property managers may maintain on behalf of the corporation. Condominium managers who do not maintain trust accounts for condominium corporations do not require a licence from RECA. RECA does not deal with complaints about the conduct of a condominium manager except if it relates to trust accounts.

Establishing minimum requirements for condominium managers could be done through accreditation, licensing or other means that may be determined later.

1. Should there be formalized, industry-wide minimum requirements for knowledge, competencies and standards of practice for all Alberta condominium managers?

☒ Yes ☐ No

Comments/Reasons for your answer:

Consideration should be given to the definition of condominium managers and what activities they will undertake. Relationships and responsibilities to the condominium board and unit owners should be clearly outlined. There should be standards of practice for the integrity of condominium managers and to create and support consumer confidence. Standards should be enforced by government or an organization. These managers are currently unregulated (except when they hold money in trust for others pursuant to the *Real Estate Act*, at which time the person requires a license under this legislation). Dissatisfied consumers do not know where to turn for remedies and complaints are lodged with the government who have no jurisdiction to deal with issues. The Courts offer some remedies but lawyers are expensive and judicial processes are costly and complex.

B. Condominium records held by the condominium manager

Condominium corporation seals, meeting minutes, correspondence files, contracts and other legal and financial records are often kept by the condominium manager for convenience. These records can be in electronic, paper or other formats. Regardless of where these records are kept, they are still legally the corporation's property.

When condominium managers' contracts end or when relations become strained, some condominium managers have either returned records late or failed to return them altogether. Some corporations have had to take legal action against the manager to get their records back. A corporation that cannot get its records back within a reasonable amount of time may be at risk of having no insurance coverage or not being able to pay bills or carry out other important business on time.

Some condominium management contracts permit the condominium manager to charge a fee for copying and returning the corporation's documents and records upon termination of the contract.

Committee Recommendation:

- Condominium managers must return the corporation's property, including all seals, minutes, corporate documents, correspondence files, contracts, and other legal and financial records (paper, electronic or other formats) to the corporation within 30 days of the termination of the management contract.
- The corporation's property must be returned at no cost to the condominium corporation.
- Condominium managers can, at their cost, make and keep copies of any documents or records they need for accounting or legal purposes.

1. **Do you believe it is reasonable to require condominium managers to return the corporation's records within 30 days? If not, what do you think is a reasonable amount of time for condominium managers to return the corporation's property following termination of their contracts?**

☐ Yes ☐ No ☒ Other

Comments/Reasons for your answer:

The records are necessary to the ongoing operations of the corporation and for all unit owners, including for potential purchase and sales. If anything 30 days for the return is too long, except for the final bank reconciliations. In our view, the condominium manager should be required to return all documents "immediately" or within three business days, except the final bank reconciliations which may be supplied within 30 days.

2. Should condominium managers be required to return certain documents sooner than others? If so, what should be returned earlier? Why?

☐ Yes ☒ No

Comments/Reasons for your answer:

All documents should be returned immediately, except perhaps bank reconciliations.

3. What documents and records, if any, should condominium managers be allowed to copy and keep?

Comments/Reasons for your answer:

They should not be permitted to keep any condominium records due to issues with confidentially, safekeeping, etc. (unless the person is regulated by RECA and in such a case must comply with the *Real Estate Act* record keeping requirements – maintain for 3 years). If there is concern that liabilities could be attributed to the condominium manager, the manager may be required to request copies from the condominium board and the Court may intervene in disputes to ensure documents are maintained. If condominium mangers become regulated, they would likely be required to retain records in accordance with legislation for regulatory purposes.

4. Should condominium managers be allowed to charge the condominium corporation a fee for copying documents that they keep?

☐ Yes ☐ No ☒ Other

Comments/Reasons for your answer:

If copying is permitted, fees should be clearly outlined in the condominium manager's agreement with the condominium board and should not be excessive. Payment of fees should not be a pre-condition of releasing documents.

5. If yes, how much should they be allowed to charge?

Comments/Reasons for your answer:

If copying is permitted, the amount should be as agreed between the parties but should not be excessive.

C. Cancelling the first condominium management contract

When a condominium plan is first registered, the developer legally owns all of the units. However, in order to register bylaws and attend to other immediate tasks, the condominium corporation requires a Board of Directors. The developer or his/her designates are usually appointed to the first Board of Directors. The first Board of Directors negotiates and signs the first condominium management contract.

As the units are sold by the developer, the ratio between developer-owned units and buyer-owned units changes. Under the requirements of the Act, the condominium corporation must hold an annual general meeting of the condominium corporation and elects a new board that may contain all, or a number of, unit buyers (the buyer-controlled board).

The buyer-controlled board can decide if it would like to continue working with the condominium manager selected by the developer (or the developer-controlled board). However, the buyer-controlled board may want to choose a new condominium manager, or may prefer to manage the corporation itself.

At present, the buyer-controlled board's options to make this choice are limited in the first year. If the management contract permits, the board can end the contract early by giving the manager the amount of notice that is stated in the contract. If the condominium manager has breached a significant term of the management contract, the buyer-controlled board can end the contract "with cause". However, it is only after the first year that the buyer-controlled board can terminate the management contract without cause by giving the condominium manager 60 days written notice..

The Committee discussed allowing corporations to terminate a management contract entered into by the developer. One possible approach was to allow cancellation of a contract entered into by a developer or the developer-controlled board at any time without cause after giving 30 days written notice.

1. Should the Board of Directors be able to terminate the first condominium management contract at any time, even during the first year, without cause?

☒ Yes ☐ No

Comments/Reasons for your answer:

Regardless of makeup of the board of directors, this is a decision for the board of directors and all unit owners need to be aware of the management contract and be able to influence who the manger will be.

2. **If corporations should be able to terminate the first management contract at any time without cause, what would be a reasonable notice period?**

Comments/Reasons for your answer:

We believe 30 days' notice is fairly standard.

D. Term of management contracts and automatic contract renewals

Management contracts vary significantly from one condominium manager to the next. Contracts vary in the services performed, fees that manager's charge and the length of time (term) that the contract is valid for. Most contracts are for two or three year terms, but some are for longer terms with no ability to end the contract early. Additionally, some contracts automatically renew at a higher cost, and do not allow the board to negotiate fees paid to the manager.

When a board agrees to a contract with a lengthy term or an automatic renewal, the contract can create significant financial obligations for the corporation and future boards. If the contract does not allow for early termination, a board that wants to terminate early may have to pay the condominium manager an amount equivalent to the monthly management fee for the remainder of the term. However, if the contract ends early the condominium manager may expect some form of compensation or notice, to mitigate a financial loss.

1. **Should the Act deal with management contract terms, renewals and termination or should this be left between the parties of the contract to negotiate?**

☐ Yes, address this in the Act ☒ No, leave it to negotiation between the parties

Comments/Reasons for your answer:

The condo board has been elected. They are vested with authority to make decisions, including contract terms, renewals and terminations.

2. **If your answer to question (1) is yes, should there be a maximum allowable term for condominium management contracts?**

☐ Yes ☐ No

Comments/Reasons for your answer:

3. **If your answer to (2) is yes, should automatic renewals be allowed?**

☐ Yes No

Comments/Reasons for your answer:

4. **If your answer to (3) is yes, should there be limits on the number of automatic renewals allowed?**

☐ Yes ☐ No

Comments/Reasons for your answer:

5. If your answer to (1) is yes, should management contracts be required to contain provisions allowing early termination of the contracts?

Yes ☐ No

Comments/Reasons for your answer:

6. If your answer to (5) is yes, how much notice should be given when terminating a condominium management contract that has a term that is longer than one year?

Comments/Reasons for your answer:

7. Resolving Disputes

In a condominium community, people with different interests and backgrounds live or work in close contact with one another, which can sometimes lead to disagreements and disputes. Disputes between a unit owner and the Board tend to be over issues such as bylaw matters, parking privileges, pets, use and enjoyment of units or common property, repairs to damaged property, etc. Owners also have disputes with each other from time to time, for example, on matters like noise or odors entering a unit from another unit. Additionally, Boards can have disputes with external parties such as contractors hired to provide goods or services to the corporation.

Disputes are usually resolved through negotiation between the parties involved. In the event that disputes cannot be resolved informally, condominium parties may pursue dispute resolution procedures set out in the Act. These procedures include going to court or Alternative Dispute Resolution (ADR) in the form of arbitration, mediation and conciliation.

Court action can be initiated by any party, but it is often expensive, uncertain, intimidating, stressful and lengthy. ADR can be faster, private, less expensive and give the people involved more control over the process. However, ADR can only be used if all parties to a dispute agree to it. In addition, the mediator, arbitrator or conciliator overseeing the ADR process may not always be knowledgeable about condominium matters.

Condominium owners and boards have expressed the need for better alternatives that address the cost and time commitments required by the current dispute resolution processes. Some provinces have mandatory mediation and arbitration for condominium disputes. Some jurisdictions use an Ombudsman or other authority to deal with condominium complaints. Since the changes to the Act in 2000, the Alberta Provincial Court began using a successful mediation process to resolve many provincial court (small claims) cases; and in late 2010, the Court of Queen's Bench also started a mandatory mediation process for all court cases, including some condominium lawsuits.

Committee Recommendation:

- The Act should provide new ways of resolving disputes that are more accessible to condominium parties.
- Any new dispute resolution model should be administered by a government-appointed authority (e.g. decision-maker or facilitator) knowledgeable about condominium legislation and condominium-related disputes.

Two possible dispute resolution models have been identified:

A. A tribunal system in which an adjudicator or other provincial authority with expertise in condominium matters is given power under Alberta legislation to accept and review eligible condominium complaints, provide advice, and administer hearings between the disputing parties. After hearing both parties, the adjudicator would issue a decision that can be enforced through court (similar to the decision-making powers of an arbitrator under the *Arbitration Act*). Parties may be required to pay a fixed cost to access the service.

B. A mandatory pre-court mediation system, administered by the ministry of Justice and Solicitor General. Under this system, all condominium disputes would first have to be heard by a government-appointed mediator with expertise in condominium matters, to help the disputing parties reach a mutually acceptable resolution. Application to the mediation service could be made by either of the disputing parties, but both parties would pay a fixed cost to use the service once a file is opened. If the mediation were to fail, then any of the disputing parties would be free to try other resolution methods, such as arbitration or court action.

1. Which model you would support, a tribunal system or a mandatory mediation system

☒ A. Tribunal system ☐ B. Mandatory mediation system

Comments/Reasons for your answer:

Our view is that although it is preferred that people resolve their own issues together and voluntary mediation may assist, tribunals will likely be more timely, less costly and more efficient in the long run. A tribunal hearing a matter should be made up of one expert who will have the necessary knowledge and experience to work in a timely and efficient manner, while ensuring access for parties (i.e. operate like an ombudsman but have binding decision making authority).

2. If neither model appeals to you, please describe how you would like the dispute resolution system improved for condominium parties?

Comments/Reasons for your answer:

8. Other Issues

The Committee discussed the following issues but recommended no changes be made. The issues are presented here to allow you to give your opinion on any or all of them.

A. Trust requirements for commercial condominiums. Some developers buy deposit insurance and/or "cost-to-complete guarantees". Those that do not, must keep a buyer's deposit in a trust account until the unit is transferred to the buyer, and hold back enough of the money paid for each unit to cover the cost of completing the unit and its share of the common property. This applies to developers of both residential and commercial condominiums. The Committee discussed whether this should still apply to commercial developments but decided there should be no change.

B. Quorum at meetings. Decisions can be made at meetings if a quorum (a certain percentage) of owners is present or represented by proxy (someone you have appointed to vote on your behalf). The Appendix Bylaws in the Act state the quorum is 25 per cent of owners entitled to vote, though corporations can change this at a later time. If there is still no quorum after 30 minutes have passed, the meeting is put off to the same time the following week. If quorum at the second meeting is not reached within 30 minutes, the meeting can continue. The Committee discussed lowering the percentage of voters needed for quorum, deleting the need for quorum altogether and other ways to allow the meeting to continue earlier. The Committee decided that no changes should be made to the Appendix Bylaws, and that condominium corporations should continue to set their own quorum rules.

C. Method of deciding how condominium fees (contributions) are calculated. The Act says contributions are decided based on unit factors. Corporations can pass a bylaw setting another method. This may seem unfair in condominiums with a lot of common property to maintain. The Committee discussed whether contributions should be based on unit factors alone, but decided no change should be made.

D. Counting votes. The Appendix Bylaws allow secret voting in some cases. The Committee discussed whether there should be more transparency in counting votes. It recommended no change, but did suggest boards should be given more information about appointing a scrutineer (someone to count votes and make sure that voting rules are followed) as required.

9. Additional Comments

If you have any comments on these issues, or if you would like to suggest other changes to the Act that are not discussed in this paper, please add them here. You can attach extra sheets of paper if needed.

The Real Estate Council of Alberta wishes to make the following additional comments:

- The work being undertaken to review the *Condominium Act* in Ontario facilitated by the Canadian Public Policy Forum will inform the work being undertaken in Alberta to review the Alberta *Condominium Property Act*. Where there are opportunities to harmonize

between provinces, this objective is encouraged. A collaborative approach with Ontario is recommended given both provinces are reviewing similar legislation in a similar timeframe and Ontario has completed some of the high level work that Alberta may find useful and beneficial to its work.

- RECA supports the findings in the Canadian Public Policy Forum report on review of Ontario's *Condominium Act* as it relates to minimum standards and education for condominium managers (these are attached as Schedule A). As between the condominium manager, the board and owners, service agreements, management fees, agency relationships, disclosure obligations need to be clear i.e. conflicts of interest between the condominium manager and retained companies who perform work for the corporation should also be disclosed, etc.
- The expectations and responsibilities for all parties involved in condominiums need to be clearly laid out in the legislation. There are many types of condominium each offering different packages as it relates to the unit, parking, insurance, common property, fees, manner of calculating reserve funds, etc. It is critical to consumers that they be supplied accurate and full information upon which they may make informed buying decisions.
- Mandatory condominium documentation should be registered and easily accessible through a central repository.
- Standardized minute, bylaws, financials and budget templates should be contemplated.
- Governance of condominiums is a live issue in Alberta, including ensuring that condominium board members are trained, knowledgeable and skilled for the work they will be required to do. Education and governance practice standards should be set. Licensed and highly competent condominium managers may be best placed to provide boards with information sessions and workshops.
- Ensuring unit owners are given adequate information and disclosures about their particular condominium on an ongoing basis and encouraging their involvement in the corporate structure may be an ongoing challenge. Guides and information pieces should be developed for boards, managers and owners to assist them in better understanding the condominium structure and their responsibilities. This may lead to a higher level of engagement.
- Those performing reserve fund studies should have adequate education, knowledge and skill and be subject to regulatory oversight.
- While there are competent condominium document reviewers in Alberta, because of a lack of skill and knowledge by many engaging in this work, mandatory education and licensing as well as some manner of regulatory oversight should be considered for these people.
- E & O insurance should be considered for condominium managers, preparers of condominium reserve fund studies and condominium document reviewers.

- Adequate consumer tools should be made available by a condominium authority in order that buying and selling consumers may take better responsibility for their own education.